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WEDNESDAY, FEBRUARY 23, 2005
1:45 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, FEBRUARY 23, 2005

16 1:45 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

ALSO PRESENT

RONALD L. DIEDRICH, Director
Office of Administrative Hearings

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

VICE CHAIRMAN BATTIN: Item number two, Governor's appointee appearing today, Ronald Diedrich, Director of the Office of Administrative Hearings.

Mr. Diedrich, come on up. Welcome.

MR. DIEDRICH: Thank you, and good afternoon.

VICE CHAIRMAN BATTIN: You have an opening statement?

MR. DIEDRICH: I do.

VICE CHAIRMAN BATTIN: Go for it.

MR. DIEDRICH: The Office of Administrative Hearings was established in 1945 as part of the original California Administrative Procedure Act. It was created to provide a neutral forum for fair and independent resolution of matters in a professional, efficient, and innovative way while still ensuring due process for all.

In 1995, the new Administrative Procedure Act was adopted following an in-depth study by the California Law Revision Commission. This study precipitated significant changes to the administrative adjudication process. The scope of the law was expanded, principles governing administrative adjudication were established. They included the necessity of written charges, subpoena power, the right to representation, and perhaps most importantly, required an agency to impose a rigid segregation within itself. This was to ensure that the prosecutors never influenced or communicated inappropriately with the ultimate decision makers.

1 As the Director of the Office of Administrative
2 Hearings, my short and long term goals revolve around protecting
3 the principles upon which the office was founded. It is
4 important that individuals who appear before the Office of
5 Administrative Hearings know that the administrative law judges
6 presiding over their cases have the same relationship with all
7 the parties, that of a neutral and unbiased trier of fact.

8 With regard to specific goals, we must make the
9 adjudicatory process more efficient and user friendly. We are
10 working towards this goal through greater communication with our
11 regional stakeholders who are providing feedback on the
12 processes and procedures.

13 We've also made the Office of Administrative
14 Hearings' web site more accessible to the general public, and
15 all our forms are now available electronically.

16 In addition, our case setting policies have been
17 changed so that the cases are heard more quickly. This is of
18 benefit to all the involved parties, which include state
19 agencies, respondents, and the public.

20 We've also instituted a quality review process.
21 Before any decision is issued from the office, it is reviewed
22 internally. While no effort is made to influence the
23 administrative law judge's ultimate decision regarding the case,
24 the decision is reviewed for the quality of the writing,
25 technical issues, correct legal citations, internal consistency,
26 and overall compliance with agency guidelines. This has
27 resulted in a reduction of complaints and better quality
28 decisions.

1 I appreciate the opportunity to share with the
2 Committee a few of my goals for the Office of Administrative
3 Hearings and will be happy to answer any questions the Members
4 may have.

5 Thank you.

6 VICE CHAIRMAN BATTIN: Thank you, Mr. Diedrich.

7 Do any Members have any questions?

8 SENATOR ASHBURN: I do, Mr. Chairman.

9 How many employees of your office?

10 MR. DIEDRICH: There's currently approximately 40
11 full-time administrative law judge positions, and roughly 20 to
12 22 support staff positions.

13 SENATOR ASHBURN: Is there a backlog?

14 MR. DIEDRICH: No, not in the sense that you
15 would normally mean, in the sense that there aren't any cases
16 that aren't set for hearing.

17 All the cases are currently set for hearing.
18 Now, some of those cases are set further out than others, but
19 we've addressed that also, or we've attempted to address that.

20 In the past, cases were set within 120 days of
21 both parties saying they were ready to go to hearing. The
22 Office of Administrative Hearings at that time made that goal
23 about 99 percent of the time, but it was an illusory goal
24 because the parties have already said they're available, and we
25 just tacked 120 days on top of it.

26 We've now changed that. All cases must be set
27 either within 90 days of the date both parties say they're
28 available, or within 210 days of the date that the case hits the

1 Office of Administrative Hearings, whichever is shorter. So,
2 we've reduced the case time considerably.

3 That has, however, put some pressure on the back
4 end of the process because judges while they're in hearing,
5 hearing cases, aren't writing their decisions. So, we have
6 experienced some pressure on the back end. We haven't been able
7 to relieve that completely for the judges, but what we have done
8 is worked on streamlining some of the clerical processes that
9 help support that to help keep the time down, so that we're
10 getting decisions out within 30 days of the end of the hearing
11 about 87 percent of the time now.

12 SENATOR ASHBURN: Thank you.

13 VICE CHAIRMAN BATTIN: Mr. Diedrich, there are
14 many citizens that are reluctant to make an appeal on a decision
15 that they lost on. They just don't have confidence that they're
16 going to win. They don't believe that, even if they're in the
17 right, they're going to find any justice.

18 How can we make them feel better in that regard?
19 How can we give them that confidence that they lack?

20 MR. DIEDRICH: I think through providing them
21 with the information that, in fact, they do prevail probably
22 more often than they believe in hearings.

23 And secondly, by making the process more
24 transparent and easier to understand. In that regard, we've
25 done quite a bit in the last eight months with our web site to
26 make it more user friendly, to make more connections with it.
27 We've been exploring doing what was done in Arizona, and that's
28 actually video taping hearings and putting one on the web site

1 so someone could go and look at, and see what a hearing actually
2 looks like in that regard.

3 Additionally, we could do better on some of our
4 outreach, in particular outreach with the boards of the
5 Department of Consumer Affairs. I think the Board of Registered
6 Nursing has an select program where they require their future
7 licensees to come and actually sit at a board meeting. At some
8 of those board meetings, we could be more proactive in providing
9 presentations on what exactly transpires in a hearing at the
10 Office of Administrative Hearings, so that they feel more
11 comfortable with the process.

12 VICE CHAIRMAN BATTIN: Thank you.

13 CHAIRMAN PERATA: Further questions?

14 Anybody here in support or opposition?

15 You did a great job of thinning the crowd out
16 while I wasn't here.

17 You may summarize, or just take a vote.

18 MR. DIEDRICH: I'm all in favor of taking a
19 vote.

20 SENATOR BATTIN: Move the confirmation.

21 CHAIRMAN PERATA: We have to motion confirm from
22 Senator Battin. Please call the roll.

23 SECRETARY WEBB: Senator Ashburn.

24 SENATOR ASHBURN: Aye.

25 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

26 SENATOR BOWEN: Aye.

27 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

28 SENATOR CEDILLO: Aye.

1 SECRETARY WEBB: Cedillo Aye. Senator Battin.

2 SENATOR BATTIN: Aye.

3 SECRETARY WEBB: Battin Aye. Senator Perata.

4 CHAIRMAN PERATA: Aye.

5 SECRETARY WEBB: Perata Aye. Five to zero.

6 CHAIRMAN PERATA: Congratulations.

7 MR. DIEDRICH: Thank you.

8 [Thereupon this portion of the
9 Senate Rules Committee hearing
10 was terminated at approximately
11 1:53 P.M.]

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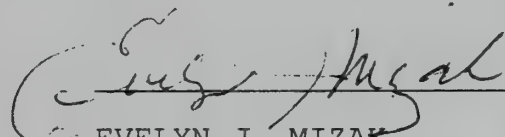
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

23rd day of February, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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Department of General Services

The Honorable Don Perata
 President Pro Tem
 California State Senate
 Senate Rules Committee
 State Capitol, Room 420
 Sacramento, CA 95814

February 11, 2005

Re: Confirmation of Ronald Diedrich as Director, Office of Administrative
Hearings, Confirmation Hearing Scheduled for February 23, 2005

Dear Senator Perata:

Thank you for providing the opportunity for me to share my short and long term goals for the Office of Administrative Hearings (OAH) with you. I look forward to the upcoming confirmation hearing.

Both my short and long term goals revolve around protecting the principle upon which the OAH was founded, to provide a neutral forum for fair and independent resolution to matters in a professional, efficient and innovative way, ensuring due process for all.

Short Term Goals

1. Adjudicate in a More Timely Fashion - Previously, cases were set 120 days from when both parties agreed to a hearing date. Depending upon when the parties stated they were available, this resulted in cases being set out as far as 18 months from the date the OAH received the hearing request. Case setting policy has been revised so that all cases are now set within 90 days of when both parties indicate they are available or within 210 days from the date the OAH receives the hearing request, whichever is shorter.
2. Operate in a More Cost Effective Manner - Case setting information is now transmitted to State agencies via electronic mail and posted weekly on the OAH's web site, resulting in a significant reduction of staff resources, paper, and postage. However, hard copies are still being mailed to private parties and their counsel for due process and logistic reasons.
3. Better Access to the Adjudicatory Process - the OAH revised its web site and has made all of its forms accessible electronically. Interested parties can now get an immediate response to continuance requests via this web site. Quarterly regional stakeholder meetings have also been instituted to discuss how processes and procedures can be improved.
4. Quality Review- the OAH instituted a policy which requires that before any decision is issued, it must be reviewed internally. No effort is made to influence the Administrative Law

FEB 11 2005

The Honorable Don Perata

-2-

February 11, 2005

Judge's (ALJ's) ultimate decision regarding the case itself, but rather the decision is reviewed for typographical errors, technical issues, correct legal citations, internal consistency, and overall compliance with agency guidelines. This has resulted in fewer complaints and better quality decisions.

Long Term Goals

1. Re-structure how the OAH's support staff and calendaring procedures operate to more accurately and reflect how OAH actually functions. The OAH needs to move to a "court clerk type" system in order to maximize the effectiveness of its staff. The OAH is presently developing a pilot project designed to test the cost effectiveness and efficiencies of a centralized calendaring system. It is anticipated that OAH will begin calendaring over 1,000 cases heard annually statewide for the Department of Developmental Services (DSS) from one location.
2. Institute an improved management system that fully and easily integrates the OAH's calendaring, case tracking, billing, record keeping, and management document systems. This system would support electronic filing of case documents, direct electronic mailing of case setting information, and secure off-site access to case data so that the ALJs can access case information. Such a case management system would promote ALJ and support staff efficiencies, further statewide consistency and uniformity in the OAH's operating practices, and assist the presiding ALJs with their responsibilities of supervising the ALJs.
3. Institutionalize regularly scheduled training for the ALJs and support staff. Such training is essential in order to appropriately meet OAH's obligation to provide quality dispute resolution services to over 100 State agencies and 800 county and local agencies that OAH serves.
4. Create a deeper employment classification for the presiding ALJs. Currently, the presiding ALJs are paid the same (and in some cases effectively less) than the ALJs they supervise. Due to the significant managerial, supervisory, adjudicatory, and time demands placed upon the presiding ALJs, it is exceedingly difficult to recruit or retain persons in that position. In short, they are asked to do far more without higher pay or other incentives.

If you have any questions, or if there is anything further you require, please do not hesitate to contact me at (916) 445-4926.

Sincerely,



Ronald L. Diedrich

Director and Chief Administrative Law Judge
Office of Administrative Hearings
State of California

RLD: ks

FEB 11 2005

STATEMENT BY PETER CAREY
February 23, 2005

My experience has afforded me the opportunity to see California's housing sector from a range of public and private perspectives. I believe that experience will serve well as a member of the Board of Directors of the California Housing Finance Agency.

A decent home is a basic building block of a decent life. The Housing Act of 1949 established a national goal of a decent home and suitable living environment for every American family. Fifty years later, we still have a long way to go in meeting this goal. Nowhere in the country is this a greater challenge than here in California, where housing prices, market conditions, community values, and regulation have combined to put affordable housing farther from the reach of many. In California, we have long recognized the importance of housing as a human necessity, a community value, and an economic investment. The present situation calls for even broader resolve and commitment. It is increasingly clear that the California economy cannot thrive if we cannot provide an adequate housing supply for all Californians.

The challenges of meeting California's housing needs defy any single solution. To be successful, our challenge is to bring to bear the resources and creativity of each element of California's public and private sectors. Every level of the public sector — local, state, and federal — must be engaged in developing effective housing policy and developing the resources needed to support its development. Public policy should encourage, and not discourage, the creation of the stock we need. At the same time, the development industry should be encouraged to apply its substantial capacity to increasing the supply of affordable housing, and the nonprofit sector should be supported in its housing efforts. And, as with Proposition 46, the public needs to be engaged directly in addressing the need for increased housing supply and opportunity.

Housing for low income people has always been a challenge, but in recent years even California's middle class has been increasingly challenged in finding affordable housing in communities near employment centers. In the most highly impacted housing markets, employers are finding their workforce limited by the fact that affordable housing is unavailable for secretaries, technicians, skilled trades workers, teachers, police officers, and others whose work is integral to the success of the California economy. Housing has become an economic challenge as well as a social one.

I have spent the 34 years in the housing and community development field. Thirty one of those years have been in California's Central Valley. As the CEO of a nationally-recognized nonprofit corporation which has created homeownership opportunities for over 6000 families and which

has developed and owns 800 units of affordable rental housing, I have first hand experience in the challenges of increasing California's housing supply. As a former Planning Commissioner, Council Member and Mayor of Visalia, I understand the challenges faced by community leaders. As an active participant in national and state housing policy issues, I understand the complexity of the policy challenges that confront us.

With this background, I am pleased to have the opportunity to serve on the Board of Directors of the California Housing Finance Agency. As the state's affordable housing lender, CalHFA is an essential part of California's housing solutions, providing below-market rate financing for California's first-time homebuyers, and investing in the development of affordable rental housing. The agency's well-earned reputation for fiscal soundness, management excellence, and program creativity extend beyond the borders of the state to the national level. Most important, CalHFA has been the key to homeownership for well over 100,000 hard-working Californian's and is increasingly contributing to the supply of rental and special needs housing.

Already an important part of the housing solution, CalHFA is in a position to do even more to increase the supply of ownership and affordable housing, particularly for those whose opportunities are limited by income or availability. I have appreciated the opportunity to be a part of the agency's leadership during the past year, and I am committed to working with the Board maximize the agency's impact.

- Having spent my career advancing housing opportunity for lower-income households, I believe it is important that even as the housing crisis affects a broader range of income levels, CalHFA must continue to target low income and difficult-to-house populations, as well as severely impacted markets.
- As a citizen and taxpayer, I will work to assure that public policy decisions are made in the open, that the fiscal integrity of the agency is maintained, and that Proposition 46 funds are used effectively to increase the California's housing supply and its affordability.
- As a developer, I will provide a channel for the development community, especially nonprofits and others dedicated to meeting the housing needs of California's low-income people.
- As a former local official, I will encourage the agency to maintain and increase the HELP program and other initiatives which support local government efforts to increase the housing supply.
- As an advocate for renters and low income people, I will work to assure that the agency maintains its focus on the residents who will benefit from the investment of agency resources.

My vision for California is a place where all children can grow up in safe, attractive and affordable housing with adequate public services, good schools, and economic opportunity. A place to call home with pride is the basis for opportunity and success in our society. I know first-hand the stories of young people whose families benefited CalHFA and other affordable housing programs. These children then went on to become the first person in their families to graduate from college and obtain careers. This is the California and American Dream that can become reality with a commitment to promote affordable rental and ownership housing for all of our people.

CALIFORNIA HOUSING FINANCE AGENCY GOALS STATEMENT

JOHN A. COURSON, CHAIR-DESIGNATE

Since the initial establishment of the California Housing Finance Agency (CalHFA) thirty years ago dramatic changes have taken place in the residential mortgage financing for low and moderate income first time homebuyers. In recent years the private market has developed a growing and significant role in serving the mortgage needs of these borrowers. Despite this expansion of private lenders into serving the mortgage needs of first time homebuyers there still exists substantial unmet needs to provide appropriate affordable housing for the low and moderate income population of California.

My goal is to have CalHFA play a prominent role in developing and implementing programs to serve this population. I have set forth below the major initiatives that CalHFA should aggressively pursue to assist in providing affordable, safe and decent housing for the citizens of our State.

***EXPAND THE MULTIFAMILY LENDING PROGRAM AND SPECIAL NEEDS PROJECTS.**

The private market has not expanded, as it has for single family homebuyers, in the financing of multifamily projects for low and moderate income residents. The demand for special needs project financing is a particular unmet need. CalHFA is well positioned to continue, and expand, the utilization of its resources and expertise to serve this population.

***DEVELOP APPROPRIATE INNOVATIVE LOAN PROGRAMS FOR FIRST TIME HOMEBUYERS.**

In recent years the mortgage markets have developed an expanded menu of mortgage loan products to meet the needs of homebuyers. CalHFA should carefully research additional loan products for first time homebuyers and develop appropriate loan programs to assist low and moderate income borrowers achieve homeownership.

***VERTICAL INTEGRATION OF FINANCING RESOURCES.**

There are numerous resources in our State for the financing of housing for the low and moderate income population. These resources are available through private lending institutions; government sponsored enterprises; and Federal, state, and local entities. CalHFA should seek to have all of these resources work together as opposed to being scattered in a patchwork of lending initiatives. Such vertical integration of resources working together on targeted initiatives will leverage into more significant results to serve the needs of our multifamily and single family markets.

***FINANCING TO CREATE HOUSING SUPPLY.**

The most pressing need in California is the creation of a supply of housing stock to serve low and moderate first time homebuyers and renters. Affordability is the major impediment to adequately providing appropriate housing to this population. CalHFA should utilize its resources to assist in the financing of the acquisition, development, and construction of affordable single family and multifamily housing.

***ESTABLISH PARTNERSHIPS WITH LOCAL GOVERNMENT ENTITIES.**

The creation of a supply of affordable housing is dependent on the participation and cooperation of local government entities. CalHFA should seek to partner with local government officials to assess the communities' needs and assist, through the vertical integration of available resources, in formulating financing plans for the development of housing stock to meet the identified needs.

***BOARD DEVELOPMENT AND EDUCATION.**

In addition to the regular CalHFA Board of Directors meetings, I have commenced, and plan to continue, to hold educational workshops for the Agency Directors and senior staff. This Board education initiative will continue to develop an informed, engaged, and active Board of Directors.

I look forward to the opportunity of building and expanding on the success of the California Housing Finance Agency in serving the citizens of California.

Senate Rules Committee

John Morris' Statement

Vision Statement

- As a board member, I shall continue to approve bond indentures, authorize bond issues, approve commitments on multifamily rental housing projects, approve all major contracts of the Agency, and approve the Agency's operating budget.
- Homeownership Program: I shall seek to expand loans to first-time homebuyer, increase loans in "high cost" areas, expand loans to minorities, expand funding for low income families, and streamline loan processing and documentation.
- Mortgage Insurance: I shall seek to expand the options for borrowers who become involuntarily unemployed.
- Multifamily Programs: I shall aggressive work with the staff to explore initiatives to improve the loan origination system, expand the residential development programs, and seek ways to expand the Special Needs Program.
- Asset Management: I shall work with staff to assure that the Agency maintains state-of-art software and hardware for tracking all transactions and managing document storage.
- Day-to-Day Operation for the Agency: The board has the authority to approve all major contracts. I shall review all major contracts to guarantee that the Agency uses its resources effectively and within the Agency's stated statutes and resolutions.

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SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

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PAT WEBB, Committee Secretary

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SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

KATHERINE L. ALBIANI, Member
California Community Colleges, Board of Governors

BRICE W. HARRIS, Chancellor
Los Rios Community College District

BRUCE PALMER, Member
Los Rios Community College District
Board of Trustees

PAM HAYNES, Member
Los Rios Community College District
Board of Trustees

RICHARD HANSEN, President
Faculty Association of California Community Colleges (FACCC)

LANCE T. IZUMI, Member
California Community Colleges, Board of Governors

1 PAULINE F. LARWOOD, Member
2 California Community Colleges, Board of Governors

3 SENATOR DEAN FLOREZ

4 MARGARET R. QUINONES, Member
5 California Community Colleges, Board of Governors

6 ARNOLD BRAY, Educational Consultant
7 School Services of California

8 DAVID VIAR, Chief Executive Officer
9 Community College League of California
10 Latino Trustees Association

11 SABRA SABIO
12 Former Outreach Counselor

13 CARL GETTLEMAN, President, Classified Senate
14 Faculty Association
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to move to Item Two in deference to everyone's busy time and schedule. We have four appointees today for the Community College Board of Governors. The first one will be Katherine Albiani.

Welcome.

MS. ALBIANI: Thank you. Would you like me to start?

CHAIRMAN PERATA: Please.

MS. ALBIANI: Well, as you know, my name is Katherine Albiani, but I refer to myself as Kay Albiani. I've lived in the area most of my life.

I have served on Elk Grove Unified School District for 18 years. During that time I was President of the California School Boards, then I decided it was time for me to graduate and move on, so I moved on to community colleges, which I've always had great respect for, and my children have attended community college, as have I.

And then I was elected to the Los Rios Community College, which is the second largest community college in the State of California, the fourth largest in the nation. We have a very -- both times of my experience with being a board member, I've had excellent staff and people I've worked with, so we've been very progressive in what we've done.

And I am the proud mother of five children, two of which are here with me today, which I'll introduce at the appropriate time.

1 And my goals, and why I ran for the community
2 college district was that I believe in the system. I think it's
3 absolutely critical. It's the backbone of the economy for the
4 State of California I believe. It's a wonderful system that was
5 created many, many years ago.

6 And with that, it was -- open access was a very
7 important part of the whole structure of community colleges. I
8 believe very strongly in keeping that open to everyone because
9 it certainly has been the way that many, many people have
10 bettered their lives and gone on to better things.

11 I also believe that we need to have rigorous
12 curriculums. And on the Board of Governors, that would be one
13 thing I would be certainly monitoring. I believe in
14 accountability, and I also think that we need to be training our
15 workforce folks what we do in our vocational programs so that
16 they meet the needs that are current needs of what the business
17 community needs them trained for.

18 And again, with my long experience as a trustee
19 for about 30 years now, I think I have the qualities to bring
20 together coalitions. I have done that throughout my experience.
21 And that would be -- I'm going to be President of California
22 Community College Trustees in May. And I think that serving on
23 local board, the three components, makes me uniquely qualified
24 to be able to do the coalition building I'd like to see done.

25 CHAIRMAN PERATA: Could you just expand a little
26 bit on workforce training, the status now and what you'd like to
27 see done?

28 MS. ALBIANI: Well, I have always been a very

1 strong advocate for vocational education in high school. And I
2 think that we need to have a stronger link between high school
3 and college programs.

4 Some of us are old folks and know, and we've
5 talked about two-plus-two, the old model of that, maybe that
6 isn't going to be the current model, but I believe that we've
7 got to strengthen the vocational education programs in K-12.
8 And I realize that Board of Governors does not do that, but I
9 certainly have links into the K-12 system, and I've been talking
10 to them about that. And I think that we also have to, as I said
11 before, be sure that what we're training our students for, that
12 there are jobs available for them.

13 In our own program at Los Rios, we have been very
14 progressive, and I'll give an example of our nursing program.
15 We have partnered with the health community in the region. And
16 this year we have graduated 25 more nurses than we did last
17 year, but ultimately we have -- all the students that are coming
18 into the system now into the our programs, we'll have 500 new
19 nurses in the region within the next few years. So, I think
20 we've got to expand that way. We've got to do it with
21 partnering with the business community and also partnering with
22 the K-12 system.

23 CHAIRMAN PERATA: Thank you.

24 Questions, Members?

25 SENATOR CEDILLO: Great work on nursing. Keep
26 working.

27 MS. ALBIANI: Keep working on nursing?

28 SENATOR CEDILLO: Keep working, but great work.

1 MS. ALBIANI: Oh, absolutely.

2 CHAIRMAN PERATA: We'll open it up to those who
3 would like to come in support.

4 MR. HARRIS: Thank you members of the Committee.

5 My name Brice Harris, and I serve as the
6 Chancellor of the Los Rios Community College District here in
7 greater Sacramento.

8 I'm here to voice my strong support for Kay
9 Albiani in a role as trustee for California's community
10 colleges. I've been in higher education for more than 30 years,
11 and I have seldom had the opportunity to work with a better
12 qualified board member than Kay Albiani. I've worked for her
13 for the last eight years, and she's been my Board President
14 twice during that time.

15 I also serve as the Chair of the CEOs for
16 California's Community Colleges and work with Kay in her
17 capacity with a triple CT. Perhaps the best thing I can say
18 about Kay is that when I took this job, a colleague said to me
19 about Kay, she will be imminently supportive of you and hold you
20 imminently accountable. And she has done both of those things
21 for the past eight years.

22 Every time Kay and I have a conversation, we talk
23 on the phone regularly, she ends that conversation by saying to
24 me, "Go out and do something good for students today." And Kay
25 has the best interests of our students, our faculty, and staff
26 at heart. It's been a pleasure to work with her, and I would
27 strongly encourage you to confirm her to the California
28 Community College Board of Governors.

1 CHAIRMAN PERATA: Thank you very much.

2 There's a familiar face.

3 Senator Perata, Committee Members, good to see
4 you.

5 MR. PALMER:° Bruce Palmer. I'm usually here
6 representing the Health Officers Association of California.
7 Today my role is different. I'm the senior member of the Los
8 Rios Community College Board of Trustees. I've served on that
9 board for 15 years, eight of those with Kay Albiani.

10 I don't know of anybody that has better judgment,
11 wisdom, integrity, and intelligence in dealing with the
12 difficult issues that we've dealt with over the last several
13 years. And you really get to see that when you work on a board
14 with somebody. You're in closed sessions, regular sessions, you
15 really get to see how they think, and she is imminently
16 qualified for this board.

17 Thank you.

18 CHAIRMAN PERATA: Thank you.

19 MS. HAYNES: Good afternoon. My name is Pam
20 Haynes. And I am a Trustee with Los Rios Community College
21 District Board. I'm the most junior member on that board, but I
22 have worked with Kay for six years.

23 What I would like you to know about her is that
24 she has a strong commitment to students, to faculty, to staff,
25 and to the general public. She holds the core value of public
26 service as a trust.

27 And she has done, on numerous occasions, has
28 brought her experience and her skill to the board and kept us

1 out of a little trouble every once in awhile. That experience
2 has boded well, and I see that experience transferring to her
3 responsibilities on the Board of Governors.

4 So, I would encourage you to support her
5 confirmation.

6 CHAIRMAN PERATA: Thank you for being here.

7 Anyone else?

8 MR. HANSEN: Good afternoon, Chair Perata and
9 Members of the Committee. My name is Richard Hansen. I'm
10 President of the Faculty Association of California Community
11 Colleges, better known as FACCC by its acronym.

12 We support Kay Albiani for appointment to the
13 board in large part due to the role she plays in engendering a
14 spirit of cooperation on her campus and in her district. That
15 is cooperation among the administration, the trustees, the
16 faculty, and the staff. She does a great job there and should
17 gain your support for confirmation.

18 Thank you very much.

19 CHAIRMAN PERATA: Thank you.

20 Anyone else? Anybody in opposition?

21 Seeing none, would you like to introduce your
22 family?

23 MS. ALBIANI: I would like to very much, thank
24 you, Senator.

25 With me today is my husband, Gil Albiani, who is
26 a recently elected member of the Elk Grove Community Service
27 District.

28 Sitting next to him is one of our daughters,

1 Jennifer Quinn, who is assistant manager of Lyon Realty in Elk
2 Grove. Mother of three of my grandchildren.

3 CHAIRMAN PERATA: Good job.

4 MS. ALBIANI: And our son Dennis Albiani, and he
5 works here in the Capitol. He's our youngest son and, as many
6 of you know, father of our latest grandchildren, triplet girls.

7 The others were unable to make it. I have
8 Barbara Davis Lyman from Los Rios that has come today. She's a
9 member of the Faculty Association, and she's here in support as
10 well.

11 CHAIRMAN PERATA: That's wonderful.

12 We'll entertain a motion.

13 SENATOR CEDILLO: So move.

14 CHAIRMAN PERATA: We have a motion. Discussion?
15 Call the roll, please.

16 SECRETARY WEBB: Senator Ashburn.

17 SENATOR ASHBURN: Aye.

18 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

19 SENATOR BOWEN: Aye.

20 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

21 SENATOR CEDILLO: Aye.

22 SECRETARY WEBB: Cedillo Aye. Senator Battin.

23 SENATOR BATTIN: Aye.

24 SECRETARY WEBB: Battin Aye. Senator Perata.

25 CHAIRMAN PERATA: Aye.

26 SECRETARY WEBB: Perata Aye. Five to zero.

27 CHAIRMAN PERATA: Congratulations.

28 MS. ALBIANI: Thank you.

1 CHAIRMAN PERATA: Next is Lance Izumi, Member of
2 the Board as well.

3 Welcome. We dimmed the lights for reasons that I
4 cannot explain.

5 MR. IZUMI: Thank you very much, Senator Perata,
6 and thank you. Well, I wish I had glasses to put on now.

7 Thank you very much and good afternoon, Members
8 of the Committee. My name is Lance Izumi. I'm currently the
9 Director of Education Studies and Senior Fellow in California
10 Studies at the Pacific Research Institute, which is located in
11 San Francisco and Sacramento.

12 I've lived here in Sacramento for the past 17
13 years. I've worked for our institute for the past 11 years, and
14 prior to that, worked for another public policy research
15 organization, the Claremont Institute.

16 I've also worked as a speech writer in Sacramento
17 and in Washington, writing speeches for then-Governor George
18 Deukmejian. I always tell people that I was the one who gave
19 George Deukmejian all that charisma.

20 [Laughter.]

21 MR. IZUMI: I grew up in Gardena in the Los
22 Angeles area where I attended public schools, including Gardena
23 High School. My parents still live in Gardena. My brother and
24 his family live in Torrance.

25 I'm a graduate of UCLA, UC Davis, and the USC
26 School of Law, and I served five years on the California
27 Postsecondary Education Commission. And since last April, I've
28 had the honor of serving on the Board of Governors of the

1 California Community Colleges.

2 And it's been a real pleasure to work with my
3 colleagues here in the audience and those who have been serving
4 already. I've also really enjoyed working with the wide
5 spectrum of people -- individuals, groups, institutions -- that
6 compose our community college system. It's been a great
7 learning experience for me, especially since I've dealt mostly
8 with K-12 issues, and so learning a lot about the community
9 colleges has been very beneficial.

10 There are many challenges facing the community
11 colleges. We all know about the problems involving fiscal
12 issues, enrollment, course alignment, transfer student outcome,
13 just to name a few. But what I've seen in my time on the Board
14 of Governors is that I've been really impressed by the
15 sincerity of those committed to the community colleges and their
16 dedication to improving the colleges.

17 I've really striven to listen to and to consider
18 very seriously the ideas of all those who are interested in our
19 community colleges, no matter from which organization they come
20 from.

21 Given my background, I believe that I can offer
22 positive input and hopefully leadership on the board, and
23 working with my colleagues here, lead the board into good times
24 ahead, and hopefully the system ahead as well.

25 Thank you very much.

26 CHAIRMAN PERATA: Thank you.

27 Community colleges historically, or at least as
28 far as back as I can remember, were seen as launch pad to the

1 four-year schools: the UC system and the state university
2 college system.

3 How do you think we're doing? In the short time
4 you've been there, what's your assessment of how well are we
5 doing there, what should we be doing differently?

6 MR. IZUMI: I think that in the meetings I've
7 attended, I know that the issue of transfer and course alignment
8 has been really important. We've had the privilege of having
9 the Chancellor Reed of the CSU come to speak before us and have
10 a very long session with us to talk about issues involving
11 transfer and alignment.

12 Certainly, a lot more needs to be done from what
13 I can tell. But I know that there are lots of innovative
14 efforts that are being made.

15 One of the things that I've had the real
16 privilege of getting to know better in the short time I've been
17 on the board is to go down to the Cuyamaca Community College
18 District down in the San Diego area to get familiar with the
19 Cal-Pass System there, where data is collected from K-12 through
20 the community colleges, through four-year institutions, to help
21 students better anticipate the rigors at the higher levels, at
22 each level they move up. And that makes it easier for them to
23 transition and, I think, hopefully to stay in the education
24 system and, you know, achieve their goals.

25 CHAIRMAN PERATA: What do you think is the
26 biggest obstacle to alignment?

27 MR. IZUMI: Well, I think that -- I mean, I
28 couldn't say, you know, with great certainty the single

1 biggest --

2 CHAIRMAN PERATA: You're in this building. You
3 don't have to worry about that.

4 [Laughter.]

5 MR. IZUMI: I would say that, you know, knowing
6 what's required at the other institutions is important. I think
7 in my discussions with the Cal-Pass people, it's interesting to
8 have found out just how much -- how large a lack of knowledge
9 there may have been amongst the different segments about what
10 was required at the other segments.

11 And so, therefore, once that information barrier
12 is passed, then, you know, you have agreements of cooperation
13 amongst the different segments that they've had a great deal of
14 success, you know, improving the transition of students, and you
15 know, keeping them in the system.

16 So, I mean, I'm hopeful that something like that,
17 you know, if it becomes a more generalized type of program, you
18 know, can offer a lot of help for students as they go through
19 the systems.

20 CHAIRMAN PERATA: Thank you.

21 Questions? Senator Bowen.

22 SENATOR BOWEN: A question that I could have
23 asked Ms. Albiani, and could equally be directed to any of the
24 other nominees, but it strikes me that we're asking the
25 community colleges to do three completely different missions.

26 One is the mission of a beginning college
27 education, which often results in a transfer.

28 The second is a vocational track, or a job

1 training track, that takes students into a working career that
2 is intended to require a two-year education with probably some
3 updates as technology changes and the workplace changes.

4 And the third is other kinds of educational
5 opportunities, English literacy courses, and just more general
6 educational goals that are neither directed towards entry into a
7 four-year institution nor towards an immediate career, but are
8 nonetheless an important part of education.

9 How do you suggest that colleges balance these
10 three distinctly different sets of needs, particularly in a time
11 when we are dealing with budget shortfalls?

12 MR. IZUMI: I think that one of the ways that
13 I've seen so far that colleges tend to balance that partly
14 depends on their geography. I mean, a lot of the -- although
15 that is the generalized -- those three points you brought up are
16 the generalized missions for all of the colleges, you know, some
17 colleges tend to specialize a bit in one of the three. They
18 don't ignore the other two, but they -- partly because they
19 might be, for example, near a four-year institution, and they're
20 serving as a feeder, or they happen to be in an area where
21 vocational education, or something like that, is a much more
22 important issue for the community.

23 I think that, you know, it is a difficult
24 question if all three, you know, of those missions, you know,
25 are equally important for the particular college, and they have
26 to deal with all of them on limited budgets.

27 SENATOR BOWEN: Do you see the Board of Governors
28 as having any role in that discussion, or do you see that as a

1 role that only the individual community colleges should address?

2 MR. IZUMI: No, I think that, you know, that's
3 one of the issues that I think can certainly be brought up and
4 discussed by the Board of Governors. I mean, I don't see why,
5 if there are generalized problems that face community colleges
6 as a whole, not just, you know, a particular individual
7 community colleges in different areas, then I think that that's
8 a role that the state board can fill by, you know, by it's
9 position of, you know, kind of being above all the individual
10 districts, and that we can serve as a forum, and work with the
11 different stakeholders and people who have views on this issue
12 in how to divide, how best to divide the tension of the
13 community colleges.

14 You know, I believe that it's possible for the
15 state board to serve a role in that capacity.

16 CHAIRMAN PERATA: Member questions?

17 We come to the favorite part of this. Anybody
18 who wants to come forward to speak in favor of the nominee?
19 Anybody opposed? Good for you.

20 SENATOR BATTIN: Move the confirmation of
21 Mr. Izumi.

22 CHAIRMAN PERATA: Thank you.

23 Do you have any family here.

24 MR. IZUMI: No, unfortunately my wife works for
25 the Department of Food and Agriculture here. Actually, she had
26 the pleasure of working with Kay Albiani's son for a while when
27 he was there.

28 And my step-daughter is at UC Davis right

1 now.

2 CHAIRMAN PERATA: Great, thank you.

3 We have a motion to confirm. Please call the
4 roll.

5 SECRETARY WEBB: Senator Ashburn.

6 SENATOR ASHBURN: Aye.

7 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

8 SENATOR BOWEN: Aye.

9 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

10 SENATOR CEDILLO: Aye.

11 SECRETARY WEBB: Cedillo Aye. Senator Battin.

12 SENATOR BATTIN: Aye.

13 SECRETARY WEBB: Battin Aye. Senator Perata.

14 CHAIRMAN PERATA: Aye.

15 SECRETARY WEBB: Perata Aye. Five to zero.

16 CHAIRMAN PERATA: Congratulations.

17 MR. IZUMI: Thank you very much, Senator. Thank
18 you very much.

19 CHAIRMAN PERATA: The next member is someone
20 that I've been acquainted with for a while when I was a Board of
21 Supervisors member in Alameda County. I believe you were on the
22 CSAC. That's where we must have crossed paths. Pauline, come
23 forward.

24 Pauline Larwood, it's good to see you again.

25 MS. LARWOOD: Good to see you.

26 CHAIRMAN PERATA: And you brought Dean here.

27 SENATOR ASHBURN: Mr. Chairman, breaking my
28 long-standing and much publicized policy of not announcing my

1 vote in advance for nominees, it is my pleasure to introduce to
2 the Committee Pauline Larwood, someone whom I know extremely
3 well because we had the pleasure of serving together as members
4 of the County Board of Supervisors for 10 years. During a
5 period of time that long, you get to know people very, very
6 well.

7 Pauline is an extraordinary person. She is a
8 leader of vision and dedication, and did an extraordinary job.
9 She currently is an elected member of the Kern Community College
10 Board of Trustees. Her community service sentiment and desire
11 runs very, very deep.

12 She's a school teacher, and an activist in
13 community efforts and organizations over a lifetime. And
14 Pauline, I think, is an extraordinarily fine appointment to the
15 community college trustees, will do an outstanding job.

16 Just to show that matters of principle and
17 judgment rise above all others, Pauline and I were actually
18 opponents in the primary election for the State Assembly. We
19 conducted ourselves, I think, with the proper good relationship,
20 and we have great mutual respect, and have always had that.
21 She's just a great person and a fine appointment.

22 And it's my pleasure to recommend her for
23 confirmation.

24 CHAIRMAN PERATA: You'll get to respond to that
25 in a minute.

26 [Laughter.]

27 CHAIRMAN PERATA: Senator Florez.

28 SENATOR FLOREZ: Thank you, Mr. Chairman.

1 Mr. Chairman and Members, number one, I want to
2 echo Senator Ashburn's comments and give a little perspective
3 from the small rural towns, if you will, in Kern County outside
4 Bakersfield and say that Pauline has been there for a lot of
5 farm working communities.

6 She is a champion of transfer, which is of
7 particular concern for me. She's been at every single
8 discussion we've had in terms of how do we promote, if you will,
9 the types of skills necessary for Kern County, particularly in
10 an area where we have the lowest per capita incomes probably
11 anywhere in the state in the areas I represent. I know Senator
12 Cedillo and I, we trade those statistics between his district
13 and mine.

14 But I would say that of all the Governor's
15 appointments that I've seen, at least, come to the Floor, that I
16 am very excited to vote for Pauline, because I think she just
17 has a very good heart. And I know that she's smart as anything,
18 but it's hard to find someone that has a heart that reaches out,
19 and I hope that you will confirm her as well.

20 CHAIRMAN PERATA: Thank you.

21 That's pretty high praise. You don't have to say
22 anything else.

23 Please, go ahead.

24 MS. LARWOOD: I very much, honorable Chairman and
25 Members of the panel, Senators, appreciate the opportunity to
26 come before you today. And I do think you probably have a
27 little bit of information about me.

28 But just to go through some things very quickly,

1 I have been in California quite a long time. I'm not a native
2 of California. I found it wonderful when I moved to California
3 as an adult, as about all the openness and the opportunity that
4 California has for its citizens.

5 I finished my college degree at Fresno State
6 University, and I went on, got married to a man back here about
7 33 years ago. And then, after we married, I finished a Master's
8 Degree in history.

9 I'm a school teacher. I've done some adjunct
10 faculty work. I don't do that anymore, and I do private
11 consulting work now for businesses who want to interrelate with
12 local government.

13 I've been on the Board of Trustees of the Kern
14 Community College District now for a little over six years. It
15 is difficult work. It's very rewarding work. It's difficult
16 work in a way that's entirely different from my 12 years on the
17 Board of Supervisors. As a supervisor, you actually could make
18 some changes directly. In the board of trustees, it is through
19 a lot of consultation. You have a lot of players that you have
20 to work with before you can move on and make changes. They have
21 to be a part of the team, and that's good, but it was a bit of a
22 different way.

23 Now, granted, as a member of a board of super-
24 visors, if I did the wrong thing I would be kicked out the next
25 time, and the same with the board of trustees. But you know,
26 frankly the citizens of the communities don't pay as much as
27 attention as they do to others. The media doesn't pay as much
28 as attention, so you really have to be constantly on, paying

1 attention to the education business of the community college
2 district.

3 We've been through some hard times. It's
4 important that we stabilize the funding for the community
5 colleges. The citizens of this community, the State of
6 California, I should say, are the seed corn for the economic
7 future of our state, and it's very, very important that we do
8 right by them.

9 I don't know what else you'd like to hear from
10 me, but if there is anything further, I'd be happy to answer
11 your questions.

12 CHAIRMAN PERATA: Any questions?

13 You're very much a known quantity to me, and I'm
14 really delighted that you're in this position, and that you're
15 doing it.

16 SENATOR BOWEN: Question.

17 CHAIRMAN PERATA: Oh, yes.

18 SENATOR BOWEN: Just so that I'm not viewed as
19 picking on Mr. Izumi solely because he's from Gardena --

20 [Laughter.]

21 SENATOR BOWEN: Which is next to Torrance, I
22 point out, let me ask you the same question I asked him.

23 We have these three different goals: the
24 academic track; the two-year vocational track; and then more
25 generalized education.

26 How do the community colleges grapple with the
27 need to do all three of those things? And what role should the
28 Board of Governors have, if any, in that discussion.

1 MS. LARWOOD: I actually think all three roles
2 are very important. I think the transfer role, we do very well
3 and train people well for moving on to the university or
4 colleges.

5 I think we need to do more work where it comes to
6 the technical fields and the workforce development area. We
7 have a nursing shortage in the State of California. The
8 community colleges have a large role to play there.

9 And I know the Legislature has provided for more
10 slots, more seats. Nursing's a difficult job. And so, there's
11 more to do there, and there's more to do there in other areas on
12 workforce development and technical training.

13 When it comes to noncredit and English as a
14 second language, we are a large immigrant state, and we have
15 many people who come here who need that assistance before going
16 on and being able to move into credit work. And I think we
17 cannot do without that.

18 So, I do think we have to do all three roles. I
19 am certain that not all community colleges do all three as
20 well. But I know that the community colleges that I personally
21 come from, the three colleges in our district, some do more of
22 that work than others, depending upon their demographics, but
23 they all do that work, and I think they're all important.

24 If there is anyone else who can do it better and
25 more economically, then we should hand pieces over to them.
26 Those folks haven't stepped forward yet.

27 SENATOR BOWEN: I don't think there is.

28 But one of the things that I've observed is that,

1 again demographics drives some of this, but I'm concerned that
2 we may perpetuate low expectations by focusing solely on the
3 vocational and noncredit tracks in some community colleges,
4 rather than making sure that students who come in there are also
5 aware that they have four-year opportunities.

6 You have in that regard in the community colleges
7 the same problem that some high schools have.

8 MS. LARWOOD: I understand what you're saying.
9 Having taught school, it's been my observation if you expect
10 high performance, if you expect performance from students and
11 treat them as if they're going to achieve, they will achieve.

12 There are some who are absolutely handicapped and
13 only can go so far.

14 I believe that at the community college level we
15 need to have high expectations in terms of our workforce
16 training. But I don't think that we should not expect high
17 achievement from those who are learning the trades, from those
18 who are learning to be a mechanic, for instance.

19 My parents had a trucking business. My father
20 was a mechanic. He was very smart, had to know mathematics.
21 Designed his own trucks. Never had an engineering degree.

22 We must have high expectations.

23 SENATOR BOWEN: My concern is not so much that.
24 It's to make certain that if someone comes in, and they're
25 aiming at a trade job or a job that's a two-year opportunity,
26 that the assumption isn't made that because that's what they
27 come in knowing, that there's no point in encouraging them. Or
28 you sort of give up on making it clear to them that they also

1 have other opportunities.

2 I hate to see a student come in saying, "Gee, I'd
3 like to work at the Boeing facility, testing the equipment that
4 they're using to build the jet liners," and not have anyone say,
5 "You know, you also, because of your skills and your interest,
6 would be an excellent candidate for a transfer program."

7 MS. LARWOOD: Absolutely. I agree with you.

8 I can give you another example. There's
9 numerable ones, and it depends upon --

10 SENATOR BOWEN: I don't mean to pick on Boeing.

11 MS. LARWOOD: It triggered a thought in my head
12 because you said Boeing.

13 My older brother was in the Air Force and learned
14 how to do the technology stuff, auto pilot and all of that.
15 Went to work for Boeing. Before he finished his career -- I
16 don't know if you'd say he's finished -- but he did his Boeing
17 stint. He got an accounting degree, and he did very, very
18 well.

19 And so, I think the point that you make is well
20 made, and it's something that we must keep in mind as members of
21 the Board of Governors.

22 SENATOR BOWEN: I think it's a place where the
23 board can help broaden the perception in a particular area where
24 the custom may be vocational education, but there certainly are
25 many students who are capable of doing far more if they know
26 they have the opportunity, and that's one of the challenges, as
27 you clearly have indicated.

28 CHAIRMAN PERATA: Other questions.

1 Anybody in the audience who would like to step
2 forward?

3 MS. LARWOOD: Might I introduce my husband?

4 CHAIRMAN PERATA: Absolutely.

5 MS. LARWOOD: Dr. Larwood has been my husband for
6 quite a long time. And I remember when I was speaking with you,
7 and you said, "Are you going to bring any family?" And I said,
8 "Well, my husband's handicapped." You said, "Well, we have
9 handicapped facilities."

10 So, here he is, yes you do.

11 [Laughter.]

12 CHAIRMAN PERATA: You're in the only room that we
13 have with handicapped facilities.

14 Thank you. Anybody in opposition.

15 SENATOR ASHBURN: I'd like to move the
16 appointment.

17 And also mention that Dr. Tom Larwood is a great
18 partner for Pauline, but he also is a dynamic leader in our
19 community.

20 You've all heard from me about Valley Fever. Dr.
21 Larwood is one of the foremost -- and you're going to hear more
22 this year -- Dr. Larwood is one of the foremost experts on
23 Valley Fever, and one of those who has pioneered in the effort
24 to find a vaccine to protect the public.

25 This is as good a time as any to recognize him,
26 and thank you, Tom, for your great work and your great support.

27 I move the confirmation.

28 CHAIRMAN PERATA: While you're at it, we have now

1 Senator Florez is going to have a Select Committee on West Nile,
2 so you'll want to give that equal time, making sure we don't
3 leave them out.

4 We have a motion to approve. Call the roll,
5 please.

6 SECRETARY WEBB: Senator Ashburn.

7 SENATOR ASHBURN: Aye.

8 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

9 SENATOR BOWEN: Aye.

10 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

11 SENATOR CEDILLO: Aye.

12 SECRETARY WEBB: Cedillo Aye. Senator Battin.

13 SENATOR BATTIN: Aye.

14 SECRETARY WEBB: Battin Aye. Senator Perata.

15 CHAIRMAN PERATA: Aye.

16 SECRETARY WEBB: Perata Aye. Five to zero.

17 CHAIRMAN PERATA: Congratulations.

18 MS. LARWOOD: Thank you very much.

19 CHAIRMAN PERATA: Our final appointee today is
20 Margaret Quinones.

21 Margaret, would you like to come forward, please.
22 Welcome.

23 DR. QUINONES: Thank you. You're one of the very
24 few that can pronounce it right.

25 CHAIRMAN PERATA: I get lessons from Nettie.

26 DR. QUINONES: Good afternoon. I'm Margaret
27 Quinones.

28 And I wanted to give you a snapshot of who I am.

1 I'm a daughter of Guadalupe Mariscal and Virginia Quinones. I
2 come from family of nine. My father was an undocumented
3 farmworker. My mother cleaned houses and took care of other
4 people's children.

5 And I am the only member of my family who
6 completed high school and college. But my brothers and sisters
7 are very, very hard working blue-collar people.

8 And I have two children who are not here today,
9 my daughter Sandra, my son Paco. I've raised them alone almost
10 20 years now. Paco is a graduate of UC Santa Cruz. Sandra will
11 be finishing, hopefully, next semester at Cal State Northridge.
12 But she is working also, along with my son Paco. He was an
13 assistant park ranger for Will Rogers State Park.

14 In terms of credentials, you know, where I come
15 from my mother says you always remember where you come from, and
16 you state what you're about. I went to Santa Monica College. I
17 was alumni from Santa Monica College. Both of my children
18 graduated from Santa Monica College.

19 From there I went on to Cal State Dominguez
20 Hills. I did research in mental health. I also went to USC. I
21 went to UCLA and got a doctorate. I also went to the Kennedy
22 School. I was a Fellow of the Kennedy School there.

23 But most importantly, I remember growing up, and
24 I had learning disabilities, so I was a special ed. kid. So
25 were my kids.

26 And I was one of those students in high school
27 that they said the best thing you could do is be a secretary.
28 So in high school I learned how to type real good and take

1 shorthand. And so, I can whip out really good letters from
2 those days.

3 And so for me, community college has always been
4 part of my life. I was previously a board member for Santa
5 Monica-Malibu Unified for eight years. I'm currently a board
6 member on my second term for Santa Monica College. I was one of
7 the executive board members for the California Latino School
8 Board Trustees. I'm the past President of the California Latino
9 College Trustees.

10 And I guess in my DNA is mostly an activist.
11 I've learned from my family and from my roots to stand up for
12 the hard stuff, to say the hard stuff. My background is mental
13 health. I've worked with heroin addicts. I've worked with
14 parents who were court referred.

15 So, part of my personality is to say what's at
16 the table and what needs to be said about the hard stuff. And
17 sometimes that's welcomed, and sometimes it's not, but it has
18 saved a lot of different lives in my life.

19 And I guess lastly, the thing I'm most proud of,
20 I've been a faculty member almost 20 years at El Camino College.
21 I was also a professor at Cal State Dominguez Hills for
22 Chicano-Latino Studies, and I was the coordinator of the Puente
23 Project. And the Puente Project has a very high success rate at
24 El Camino. We had about a 90 percent success rate in
25 transferring Chicano-Latino students to the UC and CSU system.

26 So in a nutshell, that's who Margaret Quinones
27 is, daughter of Virginia and Guadalupe.

28 CHAIRMAN PERATA: Thank you.

1 Questions by Members of the Committee.

2 Debra.

3 SENATOR BOWEN: Your nomination actually is a
4 difficult one for me, not because of your resume, which is
5 certainly spectacular, and your accomplishments, but because
6 I've had a number of my constituents who are concerned enough
7 about various matters to actually come into my district office
8 to meet with me in opposition to your nomination, and to write
9 with regard to it. That's unusual.

10 The concerns I would put into two categories, and
11 I'd ask you to respond to them.

12 One is on the merits, that you're not
13 sufficiently concerned with vocational education programs. And
14 that during the period when Santa Monica College was in a
15 difficult situation, that that was the focus of the cuts. At
16 least some who were involved felt like you were not willing to
17 make real efforts to find a way to keep those programs, which I
18 understand are now being restored, at least some of them.

19 Can you help enlighten me about what happened?

20 DR. QUINONES: You know, Senator Bowen, Santa
21 Monica College, I know Kay and Pauline are not going to agree
22 with this, is one of the most outstanding community colleges in
23 the state. And we had financial difficulties.

24 And when we had over the -- when we were hit with
25 the state budget cut, we had to cut our budget by 25 percent
26 because we did not get full state funding. So that meant that
27 we needed to sit down as a college and make decisions of where
28 we were going to make the cuts. Was it going to be our football

1 team? Was it going to be ESL classes? Was it going to be
2 English classes? Was it going to be math classes? Was it going
3 to be the voc ed programs?

4 And so, when we went through that entire process,
5 it was numbers. And if we had low enrollment -- if you know,
6 each community college has a personality or a profile. You look
7 at Santa Monica College, its personality is the high transfer
8 rate. Students come from all over the world and the country to
9 come to Santa Monica because it's known for its transfer rate.

10 We have a need for vocational programs, but not
11 as strong in our area as in, let's say, L.A. trade tech area.
12 So our enrollment was lower in Santa Monica.

13 So it was a matter of numbers, because vocational
14 programs, even though they're very, very needed, they're more
15 expensive to operate because of the equipment, the technology.
16 They need more allocation to be able to turn those students out
17 to be viable employees in the workforce.

18 So, I know people didn't agree with those cuts,
19 but a very comprehensive process was done, along with my other
20 board members, and we had to make a decision. Is it this? Is
21 it this? Or is it this?

22 And then I was forced to say, "This is what I can
23 live with for today." Does it mean I don't believe in
24 vocational programs? No, I don't. I do believe in vocational
25 programs. Is it doable at that time? It wasn't doable at that
26 time.

27 Just like you're faced with tough decisions here
28 in Sacramento, I was faced, along with my board members, with

1 those tough decisions.

2 SENATOR BOWEN: You know, one of the things --
3 and we certainly have confronted some of the same issues -- but
4 one of the things that we've done with some of our agencies that
5 we haven't been able to fund, and the California Arts Council is
6 a perfect example, rather than completely zero out the funding,
7 we basically left enough so that the office could be maintained,
8 the equipment, and there could be an effort from that base to
9 seek private funding.

10 One of the complaints I have about the, for
11 example, the auto tech program was that the equipment was sold
12 or disposed of, and that therefore the ability to restore that
13 program without a great expense was lost because there wasn't
14 just the acknowledgement that rebuilding from zero is a whole
15 different thing than rebuilding from a skeleton.

16 DR. QUINONES: Well, if you look again on as I
17 refer to our regional area, if you look in the Santa
18 Monica-Malibu area, we have major car dealers there. We have
19 the Saab, the Jag, the Mercedes. And a lot of those vendors
20 wanted to come in and provide curriculum to our students so that
21 they could go right into their workforce. But because we didn't
22 have that type of curriculum, that type of equipment, we
23 couldn't turn that around.

24 Is that our plan as a college? Yes, it is. We
25 did buy -- I know some people don't like it -- we bought ten new
26 acres on our Bundy site, which is near the Santa Monica Airport.
27 We were planning to put -- put it over there. But again, it's
28 going to be in the end a matter of dollars.

1 But there is that commitment that it also takes
2 the money to do that. And that's what our regional area needs,
3 is those type of vendors. Those type of employers need that
4 type of technology from our students.

5 SENATOR BOWEN: You see, I think, again following
6 the conversations that I just had Mr. Izumi and Ms. Larwood, you
7 have these three different functions.

8 And you are right in the assumption that causes
9 me the concern, which is that demographically, you know, you're
10 going to emphasize certain programs and not others. It's
11 perhaps the reverse in Santa Monica, where the assumption is
12 that primarily what's needed is a transfer track.

13 Although, my experience representing much of that
14 area is that just in the Pico neighborhood around Santa Monica,
15 the poverty rate and the needs for English language skills, and
16 so forth, are just as great as -- it's actually much greater
17 than if you go into some other parts of my district.

18 So, I'm not sure that I share the assumption, but
19 I'm really concerned about that assumption that in certain
20 areas, you're not going to even try to deal with the needs of
21 students who are not going to be on an academic track, or who
22 don't come in thinking they should be on an academic track.

23 DR. QUINONES: See, the auto tech program is not
24 the only program that Santa Monica has in vocational programs.
25 I have family members that live in the Pico neighborhood. I'm
26 very aware of the Pico neighborhood. I've been a resident there
27 28 years.

28 And we also have our nursing program. We have

1 respiratory therapy. We have other vocational programs that are
2 there, not just the auto tech.

3 And see, it's a double-edged sword for me because
4 sometimes you have people -- see, I believe, to answer your
5 question that you asked Lance and Pauline, is that sometimes
6 with usage of money, you have to regionalize these programs.
7 Sometimes they get a better curriculum; sometimes they get a
8 better sense of what's going on in the world.

9 And some people will say, well, you're just
10 taking that area for that poverty, and I don't see it that way,
11 because I don't maintain the belief that people of color or
12 certain economic status are the only ones that should be
13 streamlined into vocational programs. I don't carry that
14 premise, never have and never will. But some people do.

15 And so, I believe that if Santa Monica College --
16 maybe we don't have an auto tech program right now, but we have
17 a lot of other programs, vocational programs, that our students
18 can undertake.

19 SENATOR BOWEN: But you're not suggesting that
20 someone who comes in thinking they're going to go towards
21 mechanical or auto tech will shift to respiratory therapy or
22 nursing assistant just because --

23 DR. QUINONES: No, no it's not.

24 But when you look at the enrollment data at Santa
25 Monica, the enrollment is not as high in that area.

26 SENATOR BOWEN: Let me turn to the second area of
27 concern. And this one is a severely difficult conversation to
28 have, because it really is focused not so much on actions taken,

1 but on people feeling that they weren't treated with respect, or
2 that their concerns were not taken seriously.

3 I have an extraordinary number of letters that
4 express that, and from various organizations and people on
5 different campuses. And again, in my experience, I haven't
6 seen anything like that.

7 I'm new to Rules, and I understand there's
8 controversy in appointments. And all of us had elections, and
9 at least most of us had some controversy about whether we were
10 suited to be here or not.

11 But it's notable. Can you address that?

12 DR. QUINONES: You know, Senator Bowen, I come
13 from a value judgment of respect. And I expect respect also.

14 And during the budget process, things were very
15 disrespectful. Not -- I would say there are times when I was
16 short and curt because it was very painful to have to lay off
17 some of those people.

18 But there were also some really insensitive,
19 disrespectful things that were done not only to me, but my other
20 four board members.

21 And everybody -- what I've learned in this
22 process is that everybody's going to have their truth about
23 what's going on. And I know that what happened when sometimes
24 people don't get what they want, they don't feel heard. They
25 don't feel acknowledged, and they don't feel respected.

26 And it was my -- always my intention, will always
27 be my intention to be respectful. Will we agree? No, we
28 won't.

1 And I'm not surprised by the opposition. I also
2 went through that through the reelection. And I expect that to
3 my other board members, to go through that same thing.

4 It wasn't easy laying off people. It wasn't easy
5 cutting those programs. It was the hardest thing. When I first
6 went on Santa Monica-Malibu Unified, I had to cut my first year
7 as a trustee. And I thought I was just there to help kids. And
8 then it happened in my first term in Santa Monica.

9 So, unfortunately, I've had to learn what it is
10 through the tough stuff, and things being unpopular. And not
11 everybody's going to be happy.

12 SENATOR BOWEN: I don't have anything further at
13 this time.

14 CHAIRMAN PERATA: Thank you.

15 Other questions? Senator Cedillo.

16 SENATOR CEDILLO: I want to be fair to everyone.
17 And much like Senator Ashburn, I have a duty of disclosure.

18 I was a union representative, as some of you
19 know. And I negotiated contracts on behalf of Local 660, SEIU.
20 And on the other side of the table was Ms. Quinones.

21 I have to say that I negotiated maybe 75
22 collective bargaining agreements in my career, and that we found
23 the experience with the Santa Monica-Malibu Unified different
24 than my experience with the County of Los Angeles and with some
25 of the other entities that we negotiated.

26 So, we had a very positive experience in a time
27 period where new ideas about a concept of win-win bargaining was
28 being introduced from the management side into the labor side,

1 not something that we were accustomed to.

2 But I want to Committee to know that we have
3 negotiated contracts, and that I was the signator on those
4 collective bargaining agreements, representing the classified
5 employees.

6 Two questions. Back to the questions Senator
7 Bowen had asked.

8 None of us are unfamiliar with controversy. So,
9 I think the question is, how we grow from that, how we move
10 forward.

11 You had hard decisions to make. I oppose cuts
12 because I don't think we should be cutting any programs in this
13 great state at any level, anywhere, as long as the need exists.
14 I believe we should budget to need. Few people agree with me on
15 that, but such is the case.

16 In making your decision, I have this concern.
17 What choices were made? It's easy for us to go back and look at
18 the decisions you made, but what were some of the programs you
19 preserved? What was the thinking.

20 I mean, 25 percent for us, a cut in our budget,
21 would put us from 100 billion to 75 billion. We would be faced
22 with some very hard decisions just to get the balance of that
23 ledger.

24 What programs were preserved, if you recall?

25 DR. QUINONES: Our nursing program, ESL classes,
26 English developmental classes, developmental math classes. Just
27 the basic skills, fundamentals that students need, because
28 students are not coming to us fully prepared. And so, they were

1 just the basic skill classes. Those were the things that we
2 needed to preserve.

3 And then in terms, to answer a little bit about
4 our union experience, I'm one of the very few board members, and
5 I liked it. I know some of the other board members didn't like
6 it.

7 In Santa Monica-Malibu Unified, the board
8 negotiates with the union, not lawyers, not bargaining agents.
9 And so, for eight years I liked that. It was good. It worked
10 well in Santa Monica-Malibu.

11 In Santa Monica College they don't do that. I
12 believe in sitting down with labor, face to face. And people
13 kind of -- in the beginning we call what we call communication
14 lab, and everybody says all the ugly things they ever wanted to
15 say. And then we get down and we bargain. We talk about what
16 each other's interests are, and to show that respect.

17 And so, that's my history with really negotiating
18 with labor. That's been my experience.

19 CHAIRMAN PERATA: We have a similar thing. We
20 call it caucus.

21 DR. QUINONES: Is that what it's called?

22 CHAIRMAN PERATA: You get all the ugly things
23 out.

24 Is there anyone here who would like to come
25 forward in support of the nominee?

26 MR. BRAY: Mr. Chairman and Members, my name is
27 Arnold Bray. I'm an educational consultant for School Services
28 of California.

1 I've been working in the community college system
2 for well over 25 years. At one point in my career, I worked for
3 the State Chancellor's Office, which brought me into direct
4 contact with Board of Governors members, and I had the
5 opportunity to observe and to work with them directly. And I've
6 continued to do so over the past 25 years in my professional
7 work experience.

8 I've known Dr. Quinones for quite a few years,
9 and have had an opportunity to observe her in her work
10 environment as a faculty member at El Camino College, a
11 counselor, and most recently as a board member on the Santa
12 Monica Community College District.

13 I might mention, based on just listening to the
14 questions that were being asked by Senator Bowen and some of the
15 other Members in terms of some of the tough decisions she's had
16 to make there at Santa Monica, Santa Monica College is -- well,
17 up until this past year, it was the lowest funded community
18 college district in the state in terms of revenue per student.
19 And when the State Legislature and the Governor had to make
20 tough decisions a couple years ago, and state agencies went
21 through mid-year cuts, it hit Santa Monica particularly hard
22 because of their revenue limits that they were faced with. And
23 so, they had to make some tough decisions. But she's just one
24 of seven board members that had to make those decisions.

25 I know that she has had the best interests of
26 students throughout her career. It's what she's all about in
27 terms of helping students.

28 I think she's uniquely qualified to be a Board of

1 Governors member. And I think in terms of developing public
2 policy for the State of California as it relates to California
3 community colleges, she will do an admirable job in that regard.

4 And I would wholly endorse her, but I hope that
5 you would do it as well. Thank you.

6 CHAIRMAN PERATA: Thank you, sir.

7 MR. VIAR: I'm David Viar, the Chief Executive
8 Officer of the Community College League of California, which is
9 our statewide organization that works with our local elected
10 governing board members and our college presidents.

11 On behalf of the Community College League and its
12 Community College Trustees Association, as well as the Latino
13 Trustees Association, I'm here to support the nomination and
14 confirmation of Margaret Quinones to the Board of Governors.

15 I've had an opportunity to work with our Board of
16 Governors' members on a regular basis. And let me commend you
17 for your confirmation of the previous three who are outstanding
18 additions to our state board and will help us considerably as we
19 advance our community colleges and serve the needs of our
20 students in our community colleges.

21 You've heard Dr. Quinones' background. You've
22 heard her passion and her belief in serving students. You've
23 seen her record as a public servant and as a leader in her local
24 community to provide leadership, support, and development to
25 young Latinas as they grow and learn how to be better leaders
26 and to serve our state. You have seen her background in terms
27 of being a counselor and supporting our students in our
28 community colleges.

1 What you have heard is some opposition based on
2 decisions that were made by the Santa Monica Board of Trustees
3 in a very, very difficult situation. I hope you would look at
4 the law that calls for people being on the board who are
5 outstanding lay citizens and who have a strong interest in the
6 progress and development of our community colleges. She
7 strongly meets those needs.

8 Each of you have been in positions where you have
9 had to take strong positions because you knew what was best in
10 that particular area. Most of you have found that organizations
11 that previously supported you have blanketed your communities
12 with pamphlets, and literature, and letters challenging and
13 criticizing you for the decision you made. And yet, you knew
14 that deep down, you had considered all of the ramifications, all
15 of the different sides of an issue, and you had made ultimately
16 the decision you felt was best.

17 I hope that you will recognize that as you look
18 at the statutory requirements for confirmation to this, not
19 second guess a solid decision made by a governing board in a
20 difficult situation, and confirm a truly outstanding individual
21 with strong public service credentials and strong interest in
22 serving our community college students in our state.

23 The Trustees Association of the Community
24 Colleges, the Latino Trustees Association, support her
25 confirmation. Thank you.

26 CHAIRMAN PERATA: Thank you.

27 Anyone else in support?

28 MS. SABIO: Hello. I just came along for

1 support, and now I'm talking up here. Excuse me, I'm a little
2 nervous.

3 My name Sabra Sabio. I am a counselor at El
4 Camino College, very new. And I met Margaret four years ago.
5 And she developed -- what she didn't remember saying was our
6 first high school outreach counselor program to our local high
7 schools. And it was the first one in the state that I know of
8 that actually paid for our part-time community college
9 counselors to go out to the high schools and work in their
10 schools for ten hours a week, and to help the students think
11 about college and transferring. And it doesn't have to be just
12 the community college, the four-year, just getting them thinking
13 about universities and colleges.

14 And when the budget -- we had about ten part-time
15 counselors at that time when the program just started. And when
16 the budget cuts came, that program got dismantled, and we no
17 longer had funding to go back out to the high schools.

18 And even though Margaret is stern in some of her
19 ways, she's got the kindest heart. She made sure that all ten
20 of us were able to find jobs somewhere else, and wrote letters
21 of recommendations to other colleges, and we actually all were
22 hired and had jobs at that time after the budget cuts.

23 She is a great role model and a great mentor.
24 She's excellent.

25 One thing, just to say at El Camino in our
26 counseling division meetings, it's a time for people who will
27 bring issues to the table. And not all of us agree, of course,
28 but it's funny, because Margaret will just say a few words to

1 say, "Okay, what about the students?" And then all of us will,
2 okay, the focus goes back to where it should be. And that's one
3 thing that I notice that she's very strong at, is bringing the
4 focus back to the students.

5 Thank you.

6 CHAIRMAN PERATA: Thank you.

7 Anyone else? Anybody in opposition?

8 MR. GETTLEMAN: Good afternoon. My name is Carl
9 Gettleman. I am President of the Classified Senate of Santa
10 Monica College.

11 I was formerly the chief job steward of CSEA
12 Chapter 36 at Santa Monica College. I am currently a job
13 steward at Santa Monica College, and I have been employed at
14 Santa Monica College as an academic computing instructional
15 specialist for 17 years.

16 And I was asked by the Faculty Association of
17 Santa Monica College to come here, and I want to emphasize
18 regrettably come here, to speak against this nomination, against
19 Margaret Quinones.

20 I want to make something abundantly clear to all
21 of you, which is that there was no need whatsoever to cut those
22 vocational education programs at Santa Monica College. The
23 decisions that were made have been an unmitigated disaster for
24 the college.

25 The faculty at great -- went through laborious
26 efforts to come at a consensus decision to selectively prune all
27 the courses down there and get us within budget. And they came
28 up with a proposal. And that proposal, that was a hard won

1 consensus among them, was thrown out the window so that people
2 could be fired and programs could be cut. It was vindictive; it
3 was spiteful; it was unnecessary, and it was counterproductive.

4 The selective pruning that they suggested at
5 Santa Monica College has now occurred de facto because we're
6 down a thousand FTEs, and 200 sections have been cut. Many of
7 those sections were the ones that were targeted for the
8 selective pruning of courses that would have saved those voc ed
9 programs.

10 I want to also correct some misperceptions you
11 may have. It was not all because of the cost of these programs
12 that they were cut. Absolutely not.

13 One of the programs that was cut was the
14 Geographic Information Systems program, which is licensed
15 software by a company called Our View out of Redlands,
16 California. We still have those licenses for that software. We
17 saved nothing like by doing that. And Geographic Information
18 Systems is one of the hottest programs out there for people to
19 learn, very complex, very difficult to learn interface, that
20 gives people good, high paying jobs. And this was an excellent
21 and innovative program.

22 Another program that was cut was the
23 architectural program, which was a very innovative program that
24 allowed people to do two years of a front end of an architecture
25 degree in a community college. We pioneered that thing. People
26 came out here, generated that curriculum, gave up their jobs,
27 came to work, and lost their jobs at Santa Monica College as a
28 result of these cuts.

1 I want to talk what I was personally involved in,
2 and one of the most disgraceful things that happened at Santa
3 Monica College, which was when 18 people, many of whom had been
4 long-term employees of this college, lost their jobs one night,
5 got laid off one night at a board meeting.

6 And I know the gentlemen that spoke in favor of
7 Dr. Quinones feel the way that they do, but they don't work at
8 Santa Monica College. I do and I have. And I work at a
9 computer lab, and I see thousands of students every week, day in
10 and day out. We have 8,000 log-ins in the computer lab that I
11 administer.

12 The night that those -- what had happened was
13 that the classified employees had gotten together. Very
14 painfully we forged an agreement to enter into a work-share
15 program where we were going to voluntarily -- now, we're the
16 lowest paid people at that college -- we were going to
17 voluntarily take a 10 percent pay cut in order to preserve the
18 jobs of the people who were targeted for lay offs, many of whom
19 were union members and had served on union panels.

20 And we went to a meeting, and they misrepresented
21 the nature of the work-share program that we were offering to
22 the district. Chair Quinones went and asked my predecessor,
23 who's President of the Classified Senate that has a seat at the
24 dais, about the nature of this work-share program. She was not
25 even qualified to speak on behalf of the employees and their
26 negotiating capacity. Neither was the board qualified to even
27 negotiate directly with anybody, particularly in a public
28 meeting.

1 The people who did know about that work-share
2 program and could have saved those 18 jobs, and gotten the
3 district solvent in a shorter period of time than the cuts did,
4 were locked out of that meeting by policemen who were standing
5 at the doors, who refused to allow them into the meeting to
6 correct the misperceptions about the nature of that work-share
7 program.

8 I sit before you as President of the Classified
9 Senate at Santa Monica College. I would not be President of the
10 Classified Senate at Santa Monica College if my predecessor
11 hadn't infuriated the classified staff at Santa Monica College
12 by sending a congratulatory letter to Dr. Quinones on her
13 appointment to this Board of Governors. So acrimonious, and so
14 difficult, and there was so much condescension, and derision,
15 and scorn heaped on classified employees and faculty alike
16 during these budget cuts and subsequently that it created that
17 kind of an atmosphere at Santa Monica College.

18 And while I say I deeply regret speaking against
19 one of our own trustees in a position like this, I could not in
20 good conscience allow a nomination like this to go forward if
21 it's going to mean duplicating the experience we had at Santa
22 Monica College at a statewide level.

23 At the time that we came across the budget cuts,
24 we were one of the most heavily administrated colleges. We have
25 double the state average of administrators. Those people, many
26 of whom make 100k a year and better, didn't take a dime out of
27 their pockets to defray any of the expenses. And they threw --
28 we had two carpenters working on four satellite campuses. They

1 laid off one of those carpenters. We now have one air
2 conditioning mechanic, one carpenter. We don't even have a
3 plumber any more, and one electrician now to serve the six
4 satellite campuses.

5 When you guys look at what's going to go on in
6 the community college, you need to talk to the people who work
7 at these colleges, who see how these colleges are maintained on
8 a daily basis. You need to talk to students, and you need to
9 understand how these things run.

10 And what you want on the Board of Governors are
11 people who are innovative thinkers, creative thinkers, but
12 mostly you want people who are real advocates for this community
13 college system.

14 You cannot be an advocate for the community
15 college system of California and find yourself in opposition to
16 your faculty and your classified staff at these colleges. It
17 just can't be done. It's the employees who make this. It's the
18 people who grind out the 40-hour weeks. That's me.

19 And again, even when Dr. Quinones went and ran
20 for her last term, she did not receive the endorsement of the
21 Santa Monica for Renters Rights, which was an organization she'd
22 been with for many, many years because of the decision she made.

23 So, while they're saying you can't hold one
24 person accountable for what a board decides or a president
25 decides in relation to a community college, I ask you, who do
26 you hold accountable?

27 We had solutions to these problems. This didn't
28 have to happen this way. It certainly didn't.

1 And because it's happened this way, we are having
2 a hell of a hard time getting students back there. We're down
3 something like a thousand FTEs. That's not the kind of program
4 that you want for the community college system here in
5 California. You want a community college system that retains
6 open access, and keeps those doors open, and keeps people coming
7 in.

8 This college was once the crown jewel of the
9 community college system. We're not a poor college. We were
10 not an impoverished school. We had huge foreign enrollment and
11 what-not. We're one of the few community colleges that has its
12 own planetarium. We're one of the few community colleges that
13 has its own magnetic resonance imaging machines and what-not.
14 We have a world-class running track that Carl Lewis once trained
15 on. We have a lot of things, you know, at Santa Monica College.

16 But we're losing the heart. We're losing the
17 heart and soul of that college, and we're losing it because of
18 bad decisions, and we're losing it because of power, and we're
19 losing it because of people using these pretexts to advance
20 their own careers at the expense of the students, classified
21 staff, and faculty of the college.

22 Thank you.

23 CHAIRMAN PERATA: Thank you.

24 Anyone else in opposition?

25 MR. HANSEN: Good afternoon again. I'm Richard
26 Hansen. I'm the President of FACCC, and I'm here on their
27 behalf.

28 I would like to add one thing. And that is that

1 I teach mathematics at De Anza College, probably another one of
2 those high transfer rate colleges in the state. We also
3 have an auto tech program that's still open and running.

4 Our Association prides itself on its ability to
5 work with a wide variety of elected officials of all differing
6 political views and backgrounds, so it's fairly unusual, in fact
7 it's quite unique for us to be up here and opposing an
8 appointment.

9 I did not personally meet Margaret Quinones until
10 the first Community College Board of Governors meeting in May of
11 last year. I'll comment on that meeting at the end of my
12 remarks.

13 First I want to explain that FACCC's opposition
14 to the appointment of Quinones to the Community College Board of
15 Governors is based on two significant issues related to the
16 governance of Santa Monica College. As an elected trustee of
17 that institution, Margaret Quinones' reputation long preceded
18 her to her arrival here in Sacramento.

19 I've watched as the once proud college has become
20 a battle ground with employees being ignored, if not out and out
21 berated by an overbearing administration. Generally the blame
22 for this has been laid at the feet of the college's president,
23 Piedad Robertson, but equally culpable is the college's Board of
24 Trustees which, in a well functioning district, is really the
25 place where faculty, staff, and also students turn when they
26 feel that they are facing an unreasonable administration.

27 We also heard that although she came from the
28 faculty ranks, that Margaret Quinones consistently supported the

1 administration's anti-faculty positions. When the Santa Monica
2 College President, Piedad Robertson, appeared on Governor
3 Schwarzenegger's transition team and Quinones was shortly
4 appointed to the Community College Board of Governors, Santa
5 Monica faculty saw it as a reward for her years of unquestioning
6 support as a trustee.

7 Margaret Quinones should not be allowed parlay
8 her willingness to sacrifice faculty interests into an
9 appointment to the system leadership on the Community College
10 Board of Governors.

11 Santa Monica College raised significant
12 system-wide policy concerns that you've already heard about from
13 Carl Gettleman. These activities raise questions about the
14 college's commitment to the full range of the community college
15 mission. Robertson and Quinones displayed a misguided disregard
16 for the vocational complement. Rather than heed faculty advice
17 and take advantage of faculty willingness to increase the
18 efficiency of the vocational programs at Santa Monica College,
19 they preferred to eliminate them, cutting off a vital service to
20 young workers, working people in their community.

21 All of the other community college districts in
22 the state faced similar financial difficulties when Governor
23 Davis imposed mid-year budget cuts, but they didn't eliminate
24 vocational programs at a time when their communities desperately
25 needed workforce training.

26 It appears that Santa Monica made a
27 miscalculation in its hope to profit by eliminating its costly
28 workforce training programs and relying on its more affluent and

1 upwardly mobile students; those would be the transfer group.
2 Santa Monica enhances this population by heavy recruiting of
3 international students into their transfer programs. De Anza
4 College, my college, does the same. But recent years have seen
5 a decline in this lucrative flow of students and the district
6 has suffered, especially when it cut vocational education for
7 its local students.

8 This has had a disastrous effect with a dramatic
9 loss of students. The district has scrambled to regain these
10 students, as you've heard, but a loss of state revenue is in the
11 offing for next year.

12 Margaret Quinones and the president she served
13 have done great harm to Santa Monica College, and she should not
14 be given the opportunity to threaten the entire community
15 college system by bringing such misguided leadership to the
16 community college Board of Governors.

17 Finally, you've heard a little from Carl
18 Gettleman about Quinones' leadership style. FACCC also heard
19 about such reports from our colleagues, not only at Santa Monica
20 College, but also those at other colleges where she has either
21 worked or interacted with faculty. Primary among those are El
22 Camino, Long Beach City, and Irvine Valley. A pattern of
23 intimidation, disruptiveness, and divisiveness have emerged.

24 Personally I was skeptical at first when I heard
25 these reports. But my experience at the first Community College
26 Board of Governors meeting that Quinones attended in May of 2004
27 confirmed these reports. I've supplied the Committee -- I will
28 supply you with a copy of the Minutes from that meeting. It was

1 the first meeting at which a large number of Schwarzenegger
2 appointees, some of those whose confirmations you are
3 considering today, attended. They attended, of course, in place
4 of several ousted Davis members.

5 As you all are very well aware, May is an
6 important time for the budget. And the Chancellor's staff,
7 along with representatives from the system's constituency
8 groups, tried to bring the new board members up to speed on
9 budget issues. Unfortunately, Quinones played a disruptive
10 role. She stalled the process by raising diversionary issues
11 and challenging the Chancellor and his staff on informational
12 matters that she admitted she didn't have time to review.

13 At one point she called for postponement of the
14 discussion until a special board meeting could be held to
15 reaffirm the system's budget proposal. This was a proposal
16 which had been in place for that entire year. This would have
17 had a disastrous effect, as you know, on the system's ability to
18 respond to the May Revise.

19 It was at this point that several of the other
20 new members decided to speak up. Citing their long-term
21 experience on similar boards, not withstanding Quinones'
22 protestations, they asserted their willingness to move forward
23 on the budget.

24 As the Minutes show, when it finally came to a
25 vote, Margaret Quinones made a last-ditch effort to derail the
26 process by making a counter motion that the system proposal be
27 considered point by point, rather than as a whole, as it had
28 been originally proposed, but this was defeated.

1 In the end, all of those present voted in favor
2 of the system proposal except for members Quinones and Rhodes;
3 member Izumi abstained.

4 I saw reflected in her behavior at this meeting
5 all of the criticisms I had heard levied against her by my
6 colleagues. Her dismissal of the guidance offered by the
7 Chancellor's staff and the constituency leaders at the meeting
8 showed the same refusal to listen to the field that had been
9 evident in her treatment of Santa Monica faculty. Her
10 disruptive tactics showed a willingness to sacrifice the good of
11 the system to her own misguided intentions, much as does the
12 destruction she brought to Santa Monica College.

13 In the end, FACCC is concerned that the evidence
14 of her behavior to date on the Board of Governors, together with
15 the history of her behavior on the Board of Trustees in Santa
16 Monica, bodes ill for the gains the system has made toward unity
17 in recent years. It's only through such unity, as you all know,
18 that the community colleges have been able to navigate the
19 difficult budget proposals that they have faced over these
20 years.

21 In conclusion, FACCC urges that the Committee
22 refuse to confirm Margaret Quinones to the Community College
23 Board of Governors for the following reasons.

24 First, her history bias against faculty and
25 staff.

26 Second, her support of destructive policies that
27 disrespect the community college mission of service to all
28 students in the community through a combination of transfer,

1 vocational, and basic skills education.

2 And finally, third, her demonstrated
3 unprofessional behavior while in a position of responsibility.

4 I believe that Margaret Quinones is being
5 considered to fill a seat on the Community College Board of
6 Governors that is designated for a present or former community
7 college trustee. Surely there is a better candidate available
8 among the highly qualified citizens who have served in recent
9 years on these boards of trustees throughout the State of
10 California.

11 Thank you very much.

12 SENATOR ASHBURN: Question, Mr. President.

13 On the testimony that you just gave, I'm having
14 difficulty because, as a member of a board myself, and we serve
15 as committee members here, and then we serve in the greater body
16 of the Legislature, we often have differences of opinion..

17 And what I heard in your testimony was that this
18 nominee has a difference of opinion from time to time with
19 perhaps even the majority.

20 Why is that objectionable? Would it be your
21 desire that every appointee, each member of an elective board,
22 each person, have the same opinion? And what value would there
23 be in that?

24 MR. HANSEN: No, not at all. But the community
25 colleges, it's in legislation, have a system under which they
26 operate, which is a shared or participatory governance system.
27 And each district is locally controlled. They're very proud of
28 that, that they maintain things locally, but they are guided by

1 these overarching principals.

2 Some districts show the leadership to be able to
3 pull that off. I think maybe we've heard a little bit about
4 that today with some of the other appointees. Other districts
5 are not. Santa Monica, unfortunately, is not the only district
6 in which the shared governance process has broken down.

7 SENATOR ASHBURN: But on the issue of shared
8 governance, is that not a matter of interpretation? Your view
9 of shared governance and the implementation of it might be
10 different than someone else's view, and that there could be a
11 genuine difference of opinion.

12 MR. HANSEN: Well in my --

13 SENATOR ASHBURN: I mean, who's to judge? That's
14 my basic challenge to you, is who's to judge what is right and
15 what is wrong if this lady has simply expressed her opinion and
16 her position? You may have disagreed.

17 MR. HANSEN: But that's what I'm trying to say,
18 is it's not about disagreement because certainly we, each
19 constituency group, has its own interests. Not every one can go
20 away from the table, in fact, very few go from the table
21 completely, you know, feeling that their point of view has won
22 the day.

23 But what we heard from reports from Santa Monica
24 folks was a history of very difficult proceedings, not open to
25 discussions, belittling of them publicly in meetings.

26 SENATOR ASHBURN: Have you personally witnessed
27 this?

28 MR. HANSEN: No, I haven't. That's a thing I'm

1 reporting on.

2 SENATOR ASHBURN: And you made reference to the
3 Board of Governors meeting specifically. Were you present?

4 MR. HANSEN: And that's why I did that, because
5 that was one thing that I present for.

6 SENATOR ASHBURN: And did you witness behaviors
7 on the part of the nominee that were rude, disrespectful,
8 disruptive?

9 MR. HANSEN: Well, yes. I said disruptive and
10 obstructionist.

11 SENATOR ASHBURN: Disruptive from following a
12 strategic path in the way in which she was advocating for a
13 position that she believed, or disruptive from a behavior that
14 was, you know, deliberately intended to cause disruption at the
15 meeting, to treat people rudely, to be speaking in a voice that
16 wasn't professional? Did you witness any of those things?

17 MR. HANSEN: What I witnessed is what I testified
18 to, and that was a disruptive pattern of trying to slow the
19 process when there were things that had to be done.

20 SENATOR ASHBURN: You observed a person who
21 believed in a position that was contrary to yours, and she
22 pursued her position with vigor, and with a strategic purpose.
23 Now, what is wrong with that?

24 If she was rude, if she was disruptive, if she
25 was demeaning, if she in any way exhibited behaviors that were
26 unprofessional, did you observe that?

27 MR. HANSEN: I didn't observe demeaning
28 behavior. I observed diversionary behavior.

1 SENATOR ASHBURN: That is a strategic device.

2 MR. HANSEN: Okay, if you would see that as a
3 strategic device.

4 SENATOR ASHBURN: Well sure, if I'm intending to
5 carry a point of view.

6 I mean, I appreciate the fact that the Governor
7 has asked people to serve in this capacity and others who do not
8 have the same mind. I think we benefit from our diversity of
9 opinion.

10 MR. HANSEN: Well, the trouble is, I never saw a
11 point of view. I didn't know really where this was going.

12 SENATOR ASHBURN: Wait a minute. I wasn't there,
13 but from your testimony, Mr. President, if I can, I want to
14 finish the point, she had a point of view, and that was not to
15 proceed along the prescribed line --

16 MR. HANSEN: That's fine.

17 SENATOR ASHBURN: To go ahead with the pre-
18 determined budget recommendations because it was in dynamic.

19 I actually happen to agree with that because the
20 budget is a dynamic process. I mean, if I stepped on to that
21 board, and did not feel that the budget recommendations and
22 review from the community colleges was the way I wanted it, I
23 would have tried to delay it, too.

24 I don't understand why that disqualifies an
25 individual. That's what you're saying, is she's not qualified
26 because she had different point of view. I don't understand
27 that.

28 And I'll give you one more chance.

1 MR. HANSEN: Well, I'm not quite saying that.

2 SENATOR ASHBURN: No, I'll give you one more
3 chance.

4 Did she exhibit any behavior that you personally
5 observed that was disruptive, rude, negative, derogatory, in any
6 way disruptive?

7 MR. HANSEN: You should leave out the disruptive
8 because we've already discussed that.

9 SENATOR ASHBURN: Disruptive is in the eye of the
10 beholder.

11 MR. HANSEN: If the tactic is to be disruptive,
12 then that's what I saw.

13 SENATOR ASHBURN: Thank you.

14 CHAIRMAN PERATA: Senator Battin.

15 SENATOR BATTIN: To further Senator Ashburn's
16 point, maybe take a different tack on it, it seems that both
17 witnesses in opposition are here because you thought she was
18 rude to you. Disruptive, rude, demeaning.

19 Have you ever been to a hearing in the California
20 State Legislature.

21 MR. HANSEN: I'd say many, but I'd say at least a
22 fair number of times.

23 SENATOR BATTIN: I would say with people who
24 exhibit differences of opinion, and people who are rude, I would
25 venture to guess, maybe the exception of our Pro Tem, and maybe
26 Mr. Cedillo, everybody in this Legislature has been rude to a
27 witness where you just simply get to a point of exasperation. I
28 know I have, I will admit that, and I have done that by design.

1 And it's sometimes just in the heat of the moment.

2 But we're tasked to make a confirmation vote
3 based on somebody's commitment and ability to serve. It doesn't
4 mean that we have to agree with them all the time. The Governor
5 gets to appoint who he thinks should be on the respective boards
6 and commissions, and the Senate gets to confirm some of those
7 appointments.

8 It would be a different process here altogether
9 if we cast all our votes based on how we typically felt about
10 somebody's personality, or how we typically felt about their
11 overall positions. We have seen exceptionally diverse views on
12 the panel today in terms of where they are politically, and how
13 they hold just on different members of the board.

14 I've been listening to this, and I listened to
15 Senator Bowen's concerns because she's had visitors to her
16 office, and we got a lot of letters in opposition. And it
17 sounds to me like you've got some angry people. That's
18 unfortunate, but it doesn't sound to me like there's a reason to
19 deny the confirmation.

20 I think probably on the plus side of this, I
21 think you'll probably realize that in the next board meeting,
22 that there are people that have concerns, and maybe you'll want
23 to treat them with a little more tenderness because they seem to
24 be easily set off.

25 With that, Mr. Chairman, I would move the
26 confirmation.

27 CHAIRMAN PERATA: Any other opposition?

28 Another question.

1 SENATOR BOWEN: Just a comment.

2 I want to make it clear that my questions and
3 concerns are not about a difference of opinion, or even
4 political ideology. I think that's indicated by the fact that I
5 just voted to confirm Lance Izumi, who is a senior fellow at the
6 Pacific Research Institute, which has a completely different
7 political orientation than, say, Kay Albiani, who joined me in
8 running for a seat in the Assembly in 1992 as a Democrat.

9 So, probably ideologically, their policy, their
10 ideas of policy don't necessarily line up. So, that's not
11 what's at issue here as far as I'm concerned.

12 CHAIRMAN PERATA: Point taken.

13 Anybody else in opposition? Comments?

14 SENATOR CEDILLO: Both for the opposition, I
15 think we all want to grow from this. I think my colleague,
16 Mr. Battin, made a very valid point that you may want to weigh
17 and evaluate the criticism nonetheless. People may have
18 different points of views.

19 I've stated many times that at this point, until
20 I learn otherwise, that the standard of review here is the
21 question of honesty and compliance with the law. And when the
22 Governor brings people forward, that we don't necessarily have
23 to agree with them.

24 And I think Senator Bowen made an excellent
25 point. Mr. Izumi, we share different points of view on some
26 strategies about how we should develop our educational system,
27 but nonetheless, we expect to work with you -- we, the
28 Legislature -- on finding a common ground on those strategies.

1 I will note, though, I want to bring to the
2 attention of my colleagues and my former colleagues, I find it
3 interesting and noteworthy that I shared the same position of
4 the President of the Classified Senate. I was the chief
5 negotiator for Local 660 of the Service Employees International
6 Union. I negotiated 75 collective bargaining agreements,
7 including bargaining agreements -- and I sat across the table
8 for the negotiations -- with Ms. Quinones. And I've had a
9 completely different experience.

10 And so I think, and it's not to negate your
11 experience, I accept that. But I have had a distinct experience.
12 And I think that we have to figure out why that is the case.

13 There is challenges made here, but there's also
14 other points to consider. These votes were consensus votes. I
15 know that the faculty had a consensus vote, but the board had an
16 opposition consensus vote of seven-zero on the actions that were
17 taken.

18 I know that FACCC had a different opinion of
19 Ms. Quinones, but I know that the electorate had a different
20 opinion, which is why she's even here for consideration.

21 So, I think Mr. Ashburn has really pointed out
22 that a difference of opinion in this body and entity, in and of
23 itself, is not the criteria or the standard of review for
24 confirming or not confirming.

25 We have an expectation that people will comply
26 with the law, which was my sole and principal issue with
27 Mr. Hastings. We have an expectation that people will conduct
28 themselves with honesty and integrity in this process.

1 I think it helps that people are polite and
2 respectful, clearly seldom hurts, but that in itself is not the
3 exclusive criteria for the votes that we have to cast, even when
4 we don't share the same opinion.

5 So, I will call up the motion.

6 CHAIRMAN PERATA: I just wanted to acknowledge
7 something that a colleague mentioned to me, is that faculty and
8 educational politics tend to make this place look like a
9 Trappist monastery.

10 I am aware of the contentiousness of particularly
11 the community colleges, which tend to be, I believe, the most
12 diverse adult institutions that we have. Lots of people are
13 beginning for the first time to get a sense of their own being.
14 And we've had in the Peralta District, which is largely the
15 district that I represent, have had incredible fights that have
16 spilled over into the Assembly and the Senate, water district,
17 you name it.

18 So, I know that the feelings can run very
19 strongly, and I respect that.

20 I also will say, however, that I am delighted
21 when anybody questions staff. Not here, of course.

22 [Laughter.]

23 CHAIRMAN PERATA: But when you come out of local
24 government, and I think Pauline knows this, sometimes you serve
25 on many boards there where you are simply there by virtue of the
26 position that I serve, your primary function; you're there
27 ex-officio. And unless you challenge the staff and ask
28 questions, they will lord you. That's very, very

1 irresponsible.

2 So, if people give an administrator or staff
3 members a hard time, if they want a clear look at the numbers,
4 if this is the first time that you've had a chance to review
5 something in a position that she was in, and the May Revise was
6 coming up, I can see staff saying, "Oh no. We got the May
7 Revise. We've got to make this decision today."

8 And I would just urge all that of us respect the
9 fact that if you're going to serve in a position like that,
10 you've got to come prepared to play. If it's going to take a
11 little collision with those who are protecting the public good,
12 which sometimes we all know that career professionals believe
13 that they're doing -- we're fungible; we're going to come and
14 we're going to go but they're always going to be here protecting
15 the common good -- good for you. Whack them around the head
16 every once in a while.

17 I think with that, we will call the roll for
18 confirmation.

19 SECRETARY WEBB: Senator Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

22 SENATOR BOWEN: No.

23 SECRETARY WEBB: Bowen No. Senator Cedillo.

24 SENATOR CEDILLO: Aye.

25 SECRETARY WEBB: Cedillo Aye. Senator Battin.

26 SENATOR BATTIN: Aye.

27 SECRETARY WEBB: Battin Aye. Senator Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Four to one.

2 CHAIRMAN PERATA: We have four-to-one,
3 congratulations.

4 DR. QUINONES: Thank you very much.

5 [Thereupon this portion of the
6 Senate Rules Committee hearing
7 was terminated at approximately
8 3:05 P.M.]

9 --ooOoo--

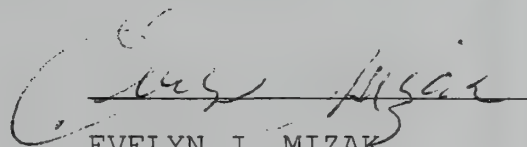
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of March, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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AMERICAN RIVER COLLEGE

COSUMNES RIVER COLLEGE

FOLSOM LAKE COLLEGE

SACRAMENTO CITY COLLEGE

January 10, 2005

The Honorable Don Perata, Chairman
 Senate Rules Committee
 State Capitol, Room 420
 Sacramento, CA 95814-4900

Dear Senator Perata:

Thank you very much for your letter of December 22, 2004 requesting information regarding my upcoming confirmation hearing as a member of the California Community Colleges Board of Governors.

I have responded below to the questions you posed in your letter. Please feel free to contact me if you need additional information on any of these items.

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the Board of Governors?*

California's community colleges are an important and vital part of the education fabric of California. My goals as a member of the Board of Governors will be to protect access to the colleges for the citizens of our State, work to continually improve the quality of the educational programs of the colleges, and ensure that the system continues to be responsive to the workforce needs of California.

2. *The community college system operates under a bilateral governance structure where the Board of Governors and the 72 locally elected boards of trustees share governance responsibilities for the system. What do you believe are the respective roles and scope of authority for the Board of Governors and for the local governing boards?*

As a locally elected trustee, I am acutely aware of the bilateral governance structure for California's community colleges. I believe that the current system, which allows local boards to set policy and determine local educational needs, and the Board of Governors to determine statewide strategic direction for the system is very effective. Although our system of 109 colleges is large and occasionally cumbersome, the bilateral system of governance does allow both the setting of statewide workforce development and transfer priorities and local response to those directions.

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- 3. *The community colleges face significant challenges because of the many missions they perform for a diverse and growing student body. How can the community colleges best meet the enrollment demands of a growing population with limited resources?***

The demand for access to California's community colleges in the next ten to fifteen years will be tremendous, and yet accommodating the growing student population will be vital to the future of our citizens and our State. Our colleges can make some ongoing improvements to efficiency, but the increased enrollment demand will not be accommodated by efficiency alone. I certainly understand that California faces tremendous financial pressures, but there needs to be an increased financial investment in the colleges in order to handle our increasingly large and diverse enrollment.

- 4. *While the primary mission of the community colleges is to offer academic and vocational instruction to recent high school graduates and adults returning to school, they also provide education and training for incumbent workers and instruction in basic skills, English as a second language and a variety of other adult noncredit instruction. Do you believe the mission of the community college has become too diverse? Should there be priorities for the delivery of certain programs? How should priorities be established?***

I do not believe it is in the best interest of the State of California for the mission of its community colleges to be restricted or prioritized. Although the State should guard against "mission creep," the various components of the colleges' mission articulated in the question above are all extremely important to the citizens of the State. Prioritization of the mission would ignore the vast diversity of needs found in our local communities. In some communities in California for example, the large number of newcomers to the State make English as a second language one of the most important responsibilities of the local college. In other communities, however, there may be fewer newcomers and they may find transfer education the top priority. It may make some sense for local colleges to prioritize their own mission, but those decisions should be left to locally elected boards.

- 5. *What do you believe should be the key features of a student fee policy for community colleges? What role should the Board of Governors play in setting student fee policies?***

The key features of future fee policy for California community colleges should include making them predictable so that families and students can plan, having any increases be modest; and setting fees at least one year in advance of their change. Recent fee increases, driven by economic necessity rather than public policy, have resulted in dramatic enrollment decline, as students are unable to prepare for significant increases. The Board of Governors should at least be responsible for recommending fee policy to the legislature, and actually setting fees as is currently done by both the University of California and the California State University boards.

Thank you again for the opportunity to respond. I look forward to having a discussion with the committee.

Sincerely,



Katherine L. Albiani
Tel: (916) 682-2445
Fax: (916) 682-2336
Email: KAlbiani@cwnet.com

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

December 22, 2004

Lance T. Izumi
4521 Hillview Way
Sacramento, CA 95822

Dear Mr. Izumi:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Community College Board of Governors.

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will help us conduct a more informed discussion with you at the hearing. Please have this information in our office by January 14, 2005.

Questions:

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the Board of Governors?*
2. *The community college system operates under a bilateral governance structure where the Board of Governors and the 72 locally elected boards of trustees share governance responsibilities for the system. What do you believe are the respective roles and scope of authority for the Board of Governors and for the local governing boards?*
3. *The community colleges face significant challenges because of the many missions they perform for a diverse and growing student body. How can the community colleges best meet the enrollment demands of a growing population with limited resources?*
4. *While the primary mission of the community colleges is to offer academic and vocational instruction to recent high school graduates and adults returning to school, they also provide education and training for incumbent*

returning to school, they also provide education and training for incumbent workers and instruction in basic skills, English as a second language and a variety of other adult noncredit instruction. Do you believe the missions of the community college have become too diverse? Should there be priorities for the delivery of certain programs and courses? How should priorities be established?

5. *What do you believe should be the key features of a student fee policy for community colleges? What role should the Board of Governors play in setting student fee policies?*

Please direct your responses to Nettie Sabelhaus, Rules Committee
Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,



DON PERATA

DP:ns:cm

RESPONSES BY LANCE IZUMI TO QUESTIONS POSED BY SENATE RULES COMMITTEE

RESPONSE TO QUESTION #1

In its recent report "Measuring Up 2004," the National Center for Public Policy and Higher Education gives California mixed grades in a number of key performance areas. The report gives California only a "C" grade in its efforts to prepare K-12 students for higher education. K-12 student performance in California lags behind the performance in other states. The report asks: "Can higher education improve partnerships with K-12 schools to improve student achievement and preparation for college?" As one of my top goals as a Board of Governors member, I would like to see the community colleges work with K-12 schools and with four-year institutions to find innovative ways to better prepare K-12 students for the rigors of higher education.

I recently visited the Grossmont-Cuyamaca Community College District, home of the promising Cal-PASS program that collects, analyzes and shares student data between K-12 and higher education institutions in order to track performance and improve student success from elementary school through university. Specifically, Cal-PASS collects important basic student information, such as the courses taken by students, the grades they earn, and the outcome of their studies such as diplomas and degrees.

Under Cal-PASS, councils with representatives from K-12 schools, community colleges and four-year universities meet to align curricula and instruction so that students have the knowledge and learning necessary to transition seamlessly from K-12 schools to higher education. In other words, knowing what is expected at the next level gives educators the information they need to prepare students better. Student performance and outcomes can then be tracked to determine the effectiveness of these alignment and preparation efforts.

In general, I would like to see the community colleges become more pro-active in forming partnerships with K-12 schools in order to ensure a more seamless transition to higher education for students and to reduce the need for basic skills instruction at college campuses.

The "Measuring Up 2004" report asks if our state can reduce the transfer barriers that inhibit students from earning a bachelor's degree. At the Board of Governors' December meeting, CSU Chancellor Charles Reed met with Board members to discuss the transfer issue. We need to ensure that students take those core classes that will transfer to the four-year institution. As a Board member, I want to work with leaders of the other segments in order to break down transfer obstacles so that students can get their four-year degrees in as efficient a way as possible.

The "Measuring Up 2004" report also asks: "Can the state use financial aid programs more effectively to encourage the college enrollment of students from low-income families?" I want to ensure that those who want to attend community college can do so. Community colleges are the gateway for many students, especially those from low-income backgrounds, into higher education. I strongly support the Board of Governors

fee waiver program and the aggressive advertising campaign that informs low-income individuals of the fee waivers and their ability to attend college at less cost.

I would also like to make the community colleges an even more effective avenue to pursue their desired career path. As a member of the BOG's advisory committee on the board's Career Ladders project, I look forward to working with project leaders to develop long-term comprehensive strategies to enable students to combine school and work in order to obtain better jobs and advance to higher levels of education. Further, I believe that it is important for the community colleges to support programs like CalWORKs that provide services to low-income individuals in order to transition them from government assistance programs to financial self-sufficiency.

As a researcher by profession, I would like to work with the research staff in the state chancellor's office and researchers throughout the community college system to ensure high quality research that addresses the various important issues facing the community colleges.

RESPONSE TO QUESTION 2

The Board of Governors addresses statewide issues such as the system budget, financial aid, and fee levels. Local boards address issues particular to their jurisdiction such as personnel issues, course offerings, and local budget issues. The state community college system is a consultative one so it is incumbent on the Board of Governors to listen to and work with local boards to address the many challenges facing the system. However, it is important to understand that consultation does not mean mandated compromise or consensus. The Board of Governors and the state chancellor take the results of consultation and take action in their determination of the best interests of the entire system. In other words, the buck stops with the Board and the chancellor. The Board and executive staff must be informed by consultation rather than paralyzed by it.

RESPONSE TO QUESTION 3

There is no getting around the fact that more funds will be needed to meet the increased enrollment growth, which is estimated to increase by 15 percent by 2009, predicted for future years. The Proposition 98 goal of 10.93 percent share of K-14 funds has not been met in many years. It is estimated that every one-tenth increase over the current 10.25 share would fund 1.2 percent in enrollment growth. If such increases in funding are not forthcoming, then the colleges must make every effort to use the dollars they do get in the most efficient and effective ways possible. Questions such as whether programs are achieving their goals need to be asked and better program evaluation should be considered. In its recent study "Evaluating Academic Programs in California's Community Colleges," the Public Policy Institute of California made a number of findings. For example, the study noted that transfer rates to four-year institutions are not sufficient for evaluating the performance of transferable courses vocational education courses. A better indicator would be placement in training-related jobs. Creating better evaluation devices would allow policymakers to decide which programs are performing

well and which are not, and make funding decisions accordingly. Indeed, AB 1417 calls on the community college system to make recommendations regarding the design of a workable annual evaluation of district-level performance in meeting statewide educational outcome priorities.

RESPONSE TO QUESTION 4

It should be noted that community college involvement in retraining of incumbent workers plus basic-skills and other adult non-credit instruction is partly due to the Legislature's guidance. As the Public Policy Institute of California points out, in 1996 the Legislature adopted language that an additional primary mission of the community colleges is "to advance California's economic growth and global competitiveness through education, training and services that contribute to continuous workforce improvement." The Legislature said that the colleges should play a more active role in local and regional economic development. Deciding whether the missions of the community colleges have become too diverse depends in part on whether the colleges are doing a poor job in one or more of their missions and if the reason for this poor performance is due to spreading themselves too thin. For this reason, evaluating the effectiveness of community college programs becomes important.

RESPONSE TO QUESTION 5

I believe that the longtime guideline that fee increases should be moderate and predictable is solid. Although California community college fees are the lowest in the nation, the "Measuring Up 2004" report indicates that net college costs (tuition, room, and board minus financial aid) for low- and-middle-income students to attend community colleges represent nearly 40 percent of their annual family income. This figure is sizeable. Thus, it is important that students are informed well in advance of any changes in fees and that those changes do not put up a wall to entry into the system.

CALIFORNIA LEGISLATURE

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NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

December 22, 2004

Pauline F. Larwood
3709 Harmony Drive
Bakersfield, CA 93306

Dear Ms. Larwood:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Community College Board of Governors.

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will help us conduct a more informed discussion with you at the hearing. Please have this information in our office by January 14, 2005.

Questions:

- 1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the Board of Governors?*
- 2. The community college system operates under a bilateral governance structure where the Board of Governors and the 72 locally elected boards of trustees share governance responsibilities for the system. What do you believe are the respective roles and scope of authority for the Board of Governors and for the local governing boards?*
- 3. The community colleges face significant challenges because of the many missions they perform for a diverse and growing student body. How can the community colleges best meet the enrollment demands of a growing population with limited resources?*
- 4. While the primary mission of the community colleges is to offer academic and vocational instruction to recent high school graduates and adults returning to school, they also provide education and training for incumbent*

workers and instruction in basic skills, English as a second language and a variety of other adult noncredit instruction. Do you believe the missions of the community college have become too diverse? Should there be priorities for the delivery of certain programs and courses? How should priorities be established?

5. *What do you believe should be the key features of a student fee policy for community colleges? What role should the Board of Governors play in setting student fee policies?*

Please direct your responses to Nettie Sabelhaus, Rules Committee
Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,



DON PERATA

DP:ns:cm

Pauline Larwood Associates

Political Consulting
Public Affairs
Regulatory Aide

January 4, 2005

Nettie Sabelhaus, Appointments Director
California Senate Rules Committee, Room 420
State Capitol
Sacramento, CA 95814

Dear Ms. Sabelhaus:

I have received your request for information regarding my views on issues that relate to my appointment as a member of the Community College Board of Governors. I am pleased to provide you with my discussion of the questions you have posed.

The numbers below correspond to your numbered questions.

Discussion:

1. I wish to assist in stabilizing the funding base for community colleges. Education is paramount to the well being of all of those who reside in California. Without a good financial base our institutions will not be able to fulfill the educational needs of our citizenry. That need is best fulfilled when community colleges remains reasonably affordable.
 2. It is the role of the 72 locally elected boards to shape local programs, facilities, and student learning outcomes by establishing local policies, procedures, and programs consistent with the minimum standards established by the Board of Governor regulations and California statutes. The role of the Board of Governors is to establish minimum academic, employment, and fiscal standards to guide and develop the districts comprising the California Community Colleges.
 3. Our growing student diversity benefits California in meeting the economic and social challenges of a changing world. Californians voted to adequately fund the community colleges when Proposition 98 passed. We must honor that vote and provide 10.93 percent of those funds to better meet the student enrollment growth of community colleges. Under the 2004-05 Budget Act, the share is 10.25 percent. Every variance by a tenth of a percentage point in Proposition 98 share equals \$50 million. This is enough money to fund a 1.2 percent enrollment growth in the CCC system.
- To further meet diverse needs public and private partnerships and collaborations can be increased to improve funding for educational programs. Such educational partnerships currently exist in areas such as health care, construction, and the auto industry. It is important to keep in mind that education provided by the community colleges is the

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Bakersfield, CA 93306
661-871-6090 Fax 661-871-4008
e-mail: flarwood@aol.com

JAN 10 2005

most cost effective use of the State's education dollar.

4. I do not think our educational service has become to diverse as we are providing for our diverse state's needs. Noncredit instruction as well as academic and vocational instruction should all remain a part of the mission of the community colleges. Contract and community education can be more nimble in delivering vocational instruction than any other method of instruction available, and it is self funded. Noncredit training is important in skill building and must also be maintained. They are all important in spurring important and necessary economic development.

5. The key features of a student fee policy should be predictability and affordability. We must strive to be accessible as well as affordable. In some areas of the state affordability is meaningless when the community college is not close enough to be accessible. Thus, provision for the cost of providing centers and distance learning must be made to meet these needs.

Academic and student support services should be provided without wide swings in fees. They should raise gradually and predictably as the cost of living increases. While the Board of Governors does not set fees, the Board should comment on what constitutes affordability systemwide. Accountability for student fees might best be accomplished by retaining those fees within the local community college budgets.

Thank you for the opportunity to reflect on the needs of California's community colleges. I look forward to meeting with you on January 10 at 4:00 P.M.

Sincerely,


Pauline Larwood

DR. MARGARET R. QUINONES, Ed.D.

Member
Board of Trustees



January 13, 2005

Senator Don Perata
Chairman Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

Attention: Nettie Sabelhaus
Rules Committee Appointments Director

Dear Senator Perata:

Thank you for your consideration of my appointment as a member of the Community College Board of Governors.

California community colleges began in the early 1900s as an effort on the part of local communities to overcome the large geographic barrier their residents faced if they wished to go to college.

In the many decades since, community colleges have been vital in helping many, many groups of people enter higher education— including women, returning veterans, those changing careers, immigrants, and students who are the first in their families to attend college. Community colleges—providing courses leading to a degree (or transfer) as well as courses for career training—are America's unique contribution to higher education.

California, by providing a thoughtful balance of local governance along with State financing and accountability, has created the largest system of higher education in the world through its community colleges.

1. Goals

During my tenure, I would hope to:

- Support local community colleges in their efforts to reflect and serve each of their communities, to be self-defined and self-determined;
- To work with other Board members to provide resources and policies that benefit the local districts and to take great care not to hinder local efforts;
- To understand what students should get from the community college experience;
- To support the Board of Governors in being more active with State legislators and to assist in their understanding of how we are able to do so much for our students at our local levels.

JAN 14 2005

2. **Bilateral governance.**

I believe in the following with respect to the roles and scope of authority for the Board of Governors and for local governing boards:

- There is a natural tension in governance within the structure of the California community colleges, but this tension is not necessarily a bad thing, rather it means that bilateral governance can bring to the system a better way of addressing issues rather than just one way or the other.
- Local governance allows efficient and effective response to local needs, for example workforce development, or the particular needs of the feeder schools, or the needs of new populations entering the district. Local boards represent the interests of the students at the college.
- But if only local, you miss the greater picture—the Board of Governors role is to always make sure the system as a whole is able to serve, that issues are worked on at a statewide level, with greater representation and to assure accountability.

3. **An increasing and diverse population, limited resources.**

How can community colleges face these significant challenges?

- Meet the demand well. It's okay to say we're not perfect, but that we can improve. Public education requires public support and a belief in our integrity of service.
- Embrace change: Support technology that guides and assists students in their choices of goals and coursework. Respond quickly to workforce training needs by adapting coursework and requirements. Support technology such as distance education that can cut down facility expenses.
- Promote partnerships wherever possible—with other governmental agencies, high schools, baccalaureate institutions, businesses, foundations, and non-profits. The Board of Governors can assist through policy, targeted funding, and communication.
- Continuously communicate goals, results, and issues to State legislators, California residents, shared governance communities, and students.

4. **Priorities for diverse missions.**

Should there be priorities for the missions of the community college and if so, how should they be established?

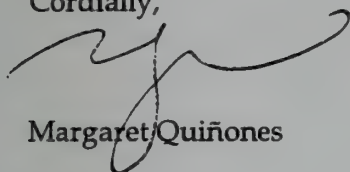
- Local needs determine priorities. California is incredibly large and diverse, and contains many varied job clusters, population clusters, and areas undergoing rapid transformations. All of the missions mentioned—transfer, vocational training, worker training, basic skills, ESL—have originated from the needs of local communities.
- Funding inequities must be reduced. Funding inequities exist primarily due to historical reasons, to population growth that outstrips State funding, or to extraordinary local need to respond to new populations. As a consequence, reducing funding inequities for credit FTES, reducing funding inequities for noncredit FTES, and providing funding for “over cap” students must be a system priority.

5. **Student fees.**

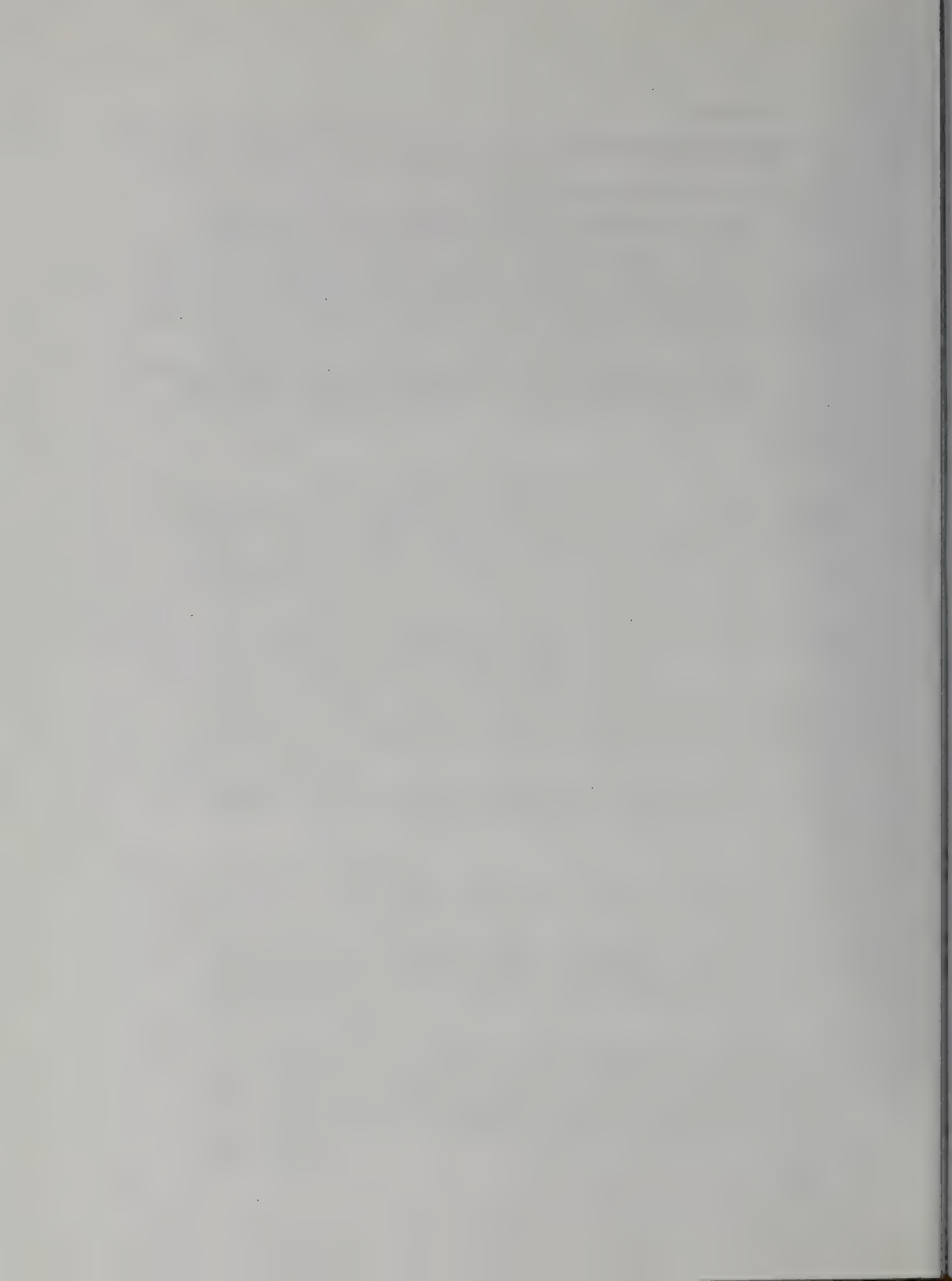
What should be the policy for student fees and what should the role of the Board of Governors be?

- Student fees must be predictable.
- The current promotion of financial aid availability should be sustained.
- California should retain its historical and unique commitment to providing affordable higher education opportunity for all who can benefit. An increasingly complex and interdisciplinary world requires a highly trained and competitive workforce and California should build on its past success and unparalleled prosperity.
- The Board of Governors should continue to inform State legislators of the community colleges' ability to empower individuals and to enrich society.

Cordially,



Margaret Quiñones



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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR GILBERT CEDILLO

MEMBER ABSENT

SENATOR DEBRA BOWEN

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

ALAN C. LLOYD, Ph.D., Secretary
Environmental Protection Agency

SENATOR ALAN LOWENTHAL

V. JOHN WHITE
Center for Energy Efficiency and Renewable Technologies

TODD CAMPBELL, Policy and Science Director
Coalition for Clean Air
City Council Member, City of Burbank

STEPHANIE WILLIAMS, Senior Vice President
California Trucking Association

ANN NOTTHOFF
Natural Resources Defense Council

1 BONNIE HOLMES-GEN
American Lung Association of California
2 California Thorasic Society

3 BILL MAGAVERN
4 Sierra Club California

5 DAN KALB
6 Union of Concerned Scientists

7 JANE WILLIAMS
8 California Communities Against Toxics

9 ROBINA SURRAL, Executive Director
California Safe Schools

10 BRUCE A. MAGNANI
11 California Chamber of Commerce

12 BERNADETTE DEL CHIARO
13 Environment California

14 DIANE TAKVORIAN, Director
Environmental Health Coalition

15 KATHRYN PHILLIPS
16 Environmental Defense

17 JESSE MARQUEZ, Executive Director
Coalition for a Safe Environment

18 WENDY JAMES, Owner
19 Better World Group

20 CINDY TUCK
21 California Council for Environmental and Economic Balance

22 SHABAKA HORU
23 Community Coalition for Change

24 DAVID MODISETTE
California Electric Transportation Coalition

25 MARY JANE FOLEY
26 Southern California Alliance of Publicly Owned Treatment Works

27 LINDA SHEEHAN, Executive Director
28 California Coastkeeper Alliance

1 L. RACHEL MONTES, Member
California State Lottery Commission

2 JOSE L. PEREZ
3 Latino Journal
4 Hispanic Chamber of Commerce, Legislative Committee

5 MEL MONTES
Husband of Nominee

6 JOHN M. WOLSDORF
7 Community Activist

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: First up is the confirmation of Alan Lloyd. Would you come forward and bring your friend.

Senator Ashburn is excited. He thought you were being confirmed.

SENATOR LOWENTHAL: Right. He had his opportunity, but he's missed it now.

CHAIRMAN PERATA: Senator Lowenthal.

SENATOR LOWENTHAL: Thank you, Mr. Chair and Members. I'm very pleased to be here today to introduce Dr. Alan Lloyd.

As you know, Dr. Lloyd has served as the Chair of the California Air Resources Board. He was appointed first by Governor Davis in 1999, reappointed by Governor Schwarzenegger in August of 2004.

We know that as Chair, Dr. Lloyd was committed to cultivating and creating an attitude both throughout government, throughout industry, throughout society that zero and zero emissions technologies can be put to use both now and in the near future to help the state meet its air quality goals. Reducing emissions from mobile sources -- cars, trucks -- is imperative to improving our state's air quality, and Dr. Lloyd has been a leader -- I repeat that -- a leader in reducing emissions from these sources.

Today more than ever it's crucial to have an expert on air quality issues as Secretary of Cal EPA, you know, especially since we need a champion to carry the message to the

1 federal government that they must help us reduce emissions from
2 ships and trains, which continue to pollute California's air.

3 So, I am very pleased to bring before you Dr.
4 Alan Lloyd. Thank you.

5 CHAIRMAN PERATA: Thank you, Senator.

6 Doctor.

7 DR. LLOYD: Good afternoon, Chairman Perata and
8 Members of the Committee. Again, thank you for the opportunity
9 to appear before you today.

10 And thank you, Senator Lowenthal, for his very
11 kind words. I look forward to working with you.

12 Before I begin, I'd like to introduce my wife of
13 over 37 years, Diana.

14 CHAIRMAN PERATA: Welcome.

15 DR. LLOYD: She has been a tremendous support for
16 me on all the endeavors, and I'd like to publicly thank her for
17 that.

18 I'm really honored to appear before you today as
19 California's fifth Secretary of Environmental Protection. It's
20 an honor which I take very seriously. As Senator Lowenthal
21 said, I have some experience as Chairman of the California Air
22 Resources Board. It taught me a lot in terms of what's
23 required, the necessity to work in a transparent process, to
24 work with all the stakeholders. And I think that explains
25 what's keeping in good stead in that case.

26 Clearly, Californians demand clean air, water,
27 and safe and healthy environment, and this is for all the
28 children and communities.

1 Again also, the Governor and I are committed to
2 making sure that we in fact have this balance between the
3 environment and the economy. We can have a robust economy, and
4 we can protect the environment. I'm really committed to that.

5 The Governor has an ambitious Environmental
6 Action Plan. A couple of those I'd like to highlight here. And
7 that is, reduce air pollution by 50 percent by 2010; protect
8 water quality and provide reliable water supplies -- and I know
9 that's close to the hearts of many of the Members here -- and
10 strictly enforce environmental laws so that the law abiding
11 citizens in fact are not unduly handicapped.

12 In addition, I've got a number of specific
13 priorities that I'd like to focus on. Just briefly, I think
14 improve the scientific data base for all decisions at Cal EPA.
15 I'm a big believer in having sound technical basis for decisions
16 to guide us in policy and regulatory programs.

17 Improving accountability and coordination amongst
18 the various boards and department within the agency. Already
19 I've seen opportunities where this can be worked, and I think to
20 coordinate our statutory and regulatory responsibilities can
21 only improve what we're trying to do.

22 Recognizing the importance of agriculture to the
23 state -- it's the fourth largest agricultural industry in the
24 world -- I am initiating the formation of a joint Cal EPA
25 agricultural advisory, industry advisory task force. This will
26 improve communications, I think, with the sectors so that in
27 fact we can work more productively together as the ag industry
28 faces many challenges, but at the same time we need to protect

1 and maintain our environment.

2 Brownfields is an area that I've become familiar
3 with in my new job, and clearly that's a case where cleanup
4 procedures for brownfields throughout the state, we need to
5 increase coordination between the regional water boards and the
6 Department of Toxic Substances Control. I've already signed a
7 Memorandum of Understanding between Cal EPA, the Department of
8 Toxic Substances Control, and the regional water boards.

9 I think fostering environmental technologies is a
10 part of the Governor's plan to encourage industry, and I'm a big
11 believer in working public-private partnerships so that in fact
12 we can create the type of technologies here to address our
13 environmental challenges, particularly in the area of water, so
14 that in fact we can take air and climate change, and we can take
15 advantage of those as we look at some of the developing
16 countries.

17 Cal EPA is developing specific greenhouse gas
18 reduction targets to mitigate the potential impact of climate
19 change on California. And I think upon the Governor's approval,
20 then Cal EPA will work with stakeholders to carry out the
21 Governor's agenda.

22 And finally, I think an exciting program that's
23 very close to me was the Governor's Hydrogen Highway Initiative.
24 We're about to submit a blueprint to the Governor, and this will
25 be also provided to the Legislature. This calls for some bold
26 action as we look to the future. But on the other hand, as we
27 see the price of gasoline, price of oil going up, I think this
28 vision of trying to provide more diversity and more security for

1 California is fundamental. That's in addition to what we're
2 doing on the continued development of super clean cars, hybrid,
3 alternate fuel vehicles. So, this is more of a long-term, but
4 we need to start that going now, and that in turn can spur a lot
5 of industries.

6 So, thank you very much for your consideration.
7 I'd be happy to answer any questions.

8 CHAIRMAN PERATA: What are you going to do next
9 year?

10 [Laughter.]

11 DR. LLOYD: When you're with the Governor, that's
12 probably a real good question.

13 CHAIRMAN PERATA: Good point.

14 Thank you, Doctor. I believe everybody here
15 shares Senator Lowenthal's appreciation of the work that you've
16 done, particularly in the area of air. Now I know why. You
17 have a Ph.D. in Gas Kinetics. I didn't know they were giving
18 those out.

19 [Laughter.]

20 CHAIRMAN PERATA: I'll refrain from asking you
21 any questions on that.

22 We had a press conference this morning where we,
23 the Caucus, announced -- the Democratic Caucus announced -- that
24 we had a package of water bills, the subject of water, which fit
25 very closely with what you just described: water quality, and
26 water protection; how to use our regional quality boards more
27 effectively; how to get more aggressive in the enforcement of a
28 lot of the laws that we have on the books.

1 And I look forward to working with you. Senator
2 Lowenthal chairs the EQ Committee, and he is carrying one of the
3 major bills.

4 We have this year put natural resources and water
5 together in the committee on the theory that, of all the natural
6 resources in this great state none surpasses water in its
7 importance.

8 I pointed out to the folks this morning that I
9 was mindful of the front cover of Vanity Fair, I'm an
10 intellectual, in the month of December.

11 [Laughter.]

12 CHAIRMAN PERATA: At least I didn't say Sports
13 Illustrated.

14 But the Governor and the first lady were astride
15 a Harley on the Pacific Coast Highway, and he mentioned in the
16 article his determination to keep California a great state
17 environmentally. So, I have no doubts about his commitment to
18 this, and certainly your appointment underscores that.

19 But the water issues in this state, the water
20 issues as a topical subject matter for our caucus, has been and
21 will continue to be paramount. So, we just want to work with
22 you and to embrace the things that you've outlined here. I
23 think these are very fine priorities.

24 I'm glad to hear you talking about brownfields
25 because for some of us, for Senator Cedillo and I, who represent
26 the more mature California communities, brownfields are a huge
27 issue for us to recycle that land and put it back into
28 productivity.

1 So, those are some of the things that concern
2 me. Specifically I wanted to mention that Senator Ducheny, who
3 wanted to be here but I wouldn't let her -- not true -- she has
4 an issue about Chromium 6. That's why I didn't let her come,
5 because she would explain it.

6 [Laughter.]

7 CHAIRMAN PERATA: As it involved the Colorado
8 River tribes.

9 I told her that I would bring it up with you, and
10 hoped that you'd meet with her soon.

11 We have an abiding interest, and this is
12 bipartisan. Senator Battin has many tribes in his district and
13 sacred sites. A lot of attention is always on the gaming aspect
14 of tribal sovereignty, but sacred sites are extremely
15 important. And to avail yourself to Senator Ducheny and others
16 who want to talk about that would be something we would really
17 appreciate.

18 DR. LLOYD: I am committed to doing that. I'm
19 aware of the issue, the concern about Chrom. 6 and the concern
20 about that getting into the Colorado River, but also we have
21 sacred sites around there. I take that very, very seriously.
22 When I served on the Grand Canyon Visibility Commission, as part
23 of the federal program I became very much aware, and also very
24 much respected of the sovereignty of the Indian tribes, and how
25 we should respect those.

26 So, I am committed to meet with Senator Ducheny
27 as soon as possible. I think we've done a good job in trying to
28 work it through, and clearly, we will do whatever it takes to

1 make sure we meet with all the parties and come to an adequate
2 resolution.

3 CHAIRMAN PERATA: Terrific.

4 I have one other question. The Governor proposed
5 initially what we call CPR. He has withdrawn, effectively
6 withdrawn that, but there were some things that we looked at in
7 terms of consolidation and elimination of boards. And as you
8 work your way through these, in fact, we have some proposals on
9 the size of the regional quality boards, but we would like to
10 work with you. And if you have any suggestions at all, we do
11 not see that as a dead subject. We intend to pursue it, and
12 we've talked to the Governor about that. So in your area, it
13 would be great.

14 DR. LLOYD: Well, Senator and Mr. Chair, I very
15 much look forward to working with you on that. I'm getting back
16 to other issues on water quality. I think as a classic example
17 of what you looked at, where the administration and the
18 Legislature can work together to a common goal.

19 On the restructuring and the CPR, all ready I see
20 some areas where we can improve things. Number one, we
21 obviously want to be a major service and protect the environment
22 in California. We want the process to be transparent, but make
23 it as efficient as possible. And we look forward to working
24 with you.

25 CHAIRMAN PERATA: Another area that was given,
26 unfortunately the integrated waste management function, the
27 interest begins and ends with the commission, what their mandate
28 is, and how much they're paid, et cetera, et cetera. But it's

1 an issue that is of very high concern. Senator Sher, who's
2 retired, has spent a great amount of time and energy in that
3 area and done some terrific work. So, we'd like to also explore
4 that with you as you begin to get a little bit more familiar
5 with that area.

6 DR. LLOYD: I agree, although I didn't think
7 that Senator Sher had retired. I thought he transitioned. He
8 is still working.

9 CHAIRMAN PERATA: He's back. I mean, we always
10 thought that Kip Lipper and Byron Sher were the same person.

11 [Laughter.]

12 CHAIRMAN PERATA: But now Kip's back there, I
13 see.

14 DR. LLOYD: But seriously, Senator, clearly I
15 continue to be impressed by the progress that's being made on
16 the waste issue and recycling. We've got some exciting new
17 programs we looked at there. I think it's important that we
18 continue that, continue the progress, continue the environmental
19 education, because that helps us all. So, we're committed to
20 doing that, at the same time trying to work with the Governor to
21 make it more efficient.

22 CHAIRMAN PERATA: One thing you might think about
23 in that area, last year we had the temerity of suggesting that
24 Sacramentans have water meters. I think it was a gross inequity
25 that we put upon them. It violated their sovereignty, but I
26 thought since I had one, everybody should have one.

27 But I also note that -- and I represent Oakland
28 and Berkeley, so we're just coming out of Communism. But there

1 is no recycling here. You just throw everything out together.

2 Maybe your influence can be felt within the city
3 as well. I don't want to put that burden on top of you, but if
4 you've ever been to a city council meeting, just knock yourself
5 out. They're fabulous.

6 DR. LLOYD: You're providing a challenge for me
7 where you can grade me very quickly, so I have to respond to
8 that challenge.

9 CHAIRMAN PERATA: I expect to see you out there
10 with a little hat on.

11 [Laughter.]

12 CHAIRMAN PERATA: Members, any other questions?

13 SENATOR ASHBURN: I do, Mr. President.

14 I appreciate your addressing agriculture, and you
15 highlighted it, I'm assuming, for a reason.

16 I'd be interested in knowing what you view as the
17 greatest threat to agriculture?

18 DR. LLOYD: The greatest threat, well, I think
19 some of that would be not in the environmental area. I think
20 it's the competition from other parts of the world.

21 SENATOR ASHBURN: Well, unless you're going to be
22 our trade ambassador, which I'm not saying you wouldn't be
23 great, but with respect to the environmental issues that
24 surround agriculture.

25 DR. LLOYD: I think there's challenges here from
26 both sides. It's clear that the --

27 SENATOR ASHBURN: No, I want your opinion as to
28 what the greatest threat is in the environmental area, not what

1 others think, or the fact that there's a division. I want to
2 know your opinion.

3 DR. LLOYD: Of the greatest threat to
4 agriculture, I think to try to match some of the regulations
5 with some of the --

6 SENATOR ASHBURN: Aside from regulations, in the
7 world as it exists, what is the greatest threat in your opinion
8 to agriculture?

9 DR. LLOYD: From an environmental viewpoint?

10 SENATOR ASHBURN: That's correct.

11 DR. LLOYD: Well, it depends how you define
12 environment. If you talk about diseases, pests, et cetera.

13 SENATOR ASHBURN: Those are all within your
14 realm; right?

15 DR. LLOYD: Yes.

16 SENATOR ASHBURN: So which one?

17 DR. LLOYD: Again --

18 CHAIRMAN PERATA: Do you have an answer?

19 [Laughter.]

20 DR. LLOYD: I'm not an agriculture expert, but I
21 think that that's part of the issue of creating this task force
22 so I can understand better multimedia wide. Part of the issues
23 that I've heard were of regulations on the air; we have
24 regulations on water; we have regulations on pesticide. And
25 some of these obviously -- some impact all, some impact
26 separately. Try to understand how we can do it more
27 efficiently.

28 SENATOR ASHBURN: Well, I do have an answer in

1 mind, and I would suggest to you, and I would be interested in
2 your reaction, that water and the lack of water is the greatest
3 threat to agriculture.

4 If the most bountiful agricultural area in the
5 world is found in the Central Valley, and that's not to minimize
6 the Monterey area, or the Imperial Valley, or the Coachella
7 Valley, or the Napa Valley, or the many other beautiful valleys.

8 [Laughter.]

9 CHAIRMAN PERATA: We'll stipulate to that.

10 SENATOR ASHBURN: But I think you would agree
11 that the Central Valley is the most productive agricultural area
12 in the world. It is a desert.

13 And water, the issue of quality is interesting,
14 but the issue of quantity supercedes all others.

15 What do you view your role in your new capacity
16 to be in providing for a greater supply of water if agriculture
17 ranks high on your list?

18 DR. LLOYD: Well, obviously working with things
19 like Cal Fed, trying to work with the individual providers,
20 looking at the various sources, how we can partition that, that
21 would be part of what I would look as a whole.

22 Clearly, I don't have the information yet to
23 adequately answer that question, but that will be something I
24 will be looking at.

25 SENATOR ASHBURN: There are tens of thousands of
26 acres in the Central Valley that are being fallowed. That means
27 they're being taken out of agricultural production.

28 Some of the environmental extremists say that the

1 reason that agricultural lands are disappearing is because of
2 the encroachment of development. That's not true.

3 What's happening is that there is no longer an
4 adequate supply of water because the water's being diverted into
5 the delta and away from agriculture.

6 That creates another problem which has to do with
7 diminished air quality, because as lands are taken out of
8 agriculture, out of irrigation, they revert to dust and to dirt.
9 And then, just through natural causes of wind, unless we are
10 going to have laws to prevent the wind, these particles move.

11 So, I would encourage you on the issue of water
12 that someone has got to lead, that you cannot have a growing
13 population, a growing demand for the highest quality of food,
14 without increasing the supply of water.

15 And that's not to minimize conservation, or water
16 quality measures to prevent contamination. I mean, I'd be
17 interested in your comment, if you'd care to offer one, about
18 what the State of California did to poison the waters of
19 California through MTBE. Who's responsible for that?

20 DR. LLOYD: Well, clearly one my first actions
21 when I was Chair of the Air Resources Board was to participate
22 in a committee to look at the impact of MTBE, and that
23 ultimately led to the Governor signing the phase-out of MTBE.

24 I think there is probably, on that particular
25 issue, probably enough blame to go around, where it was seen to
26 be a potential impact, positive impact for air quality, but then
27 it wasn't fully understood what the impact would be on some of
28 the ground surface water.

1 On the other hand, if we had a perfect system
2 where we didn't have any leaking underground storage tanks, we
3 wouldn't have had that problem. That's a classic case whereby
4 Cal EPA was created, and where the type of things that I was
5 talking about, where we need to do better.

6 SENATOR ASHBURN: What would have happened to the
7 individual who poisoned the waters of the state through MTBE if
8 that individual could be identified as an executive of a
9 corporation in our state, and that individual made the decision
10 to use this poison in the fuels? What would have happened to
11 that individual under the laws of our state?

12 DR. LLOYD: I presume he would have been
13 prosecuted.

14 SENATOR ASHBURN: And why was there a different
15 standard applied to the individual because it happened to be
16 government? Do you think there ought to be a different
17 standard?

18 DR. LLOYD: Well, I think historically, if you
19 look back at the fuel side of it, the California Resources Board
20 provided a recipe for cleaner burning gasoline. And the oil
21 companies chose to use MTBE to satisfy some of the octane
22 requirements in that case. And that was done, obviously, with
23 the support of the Federal EPA and with support of the
24 California Air Resources Board.

25 But per se, the MTBE, as I said, you're not going
26 to poison yourself because it had an odor, it had a smell, so
27 you're not going to be drinking that and killing yourself. But
28 on the other hand, because of leaking underground storage tanks,

1 the impact on water bodies, it did have major detrimental
2 impact.

3 SENATOR ASHBURN: It was a recipe for disaster
4 that was promulgated by government. And there were people in
5 government who were responsible for making the decision to
6 create that recipe.

7 I want to know, do you know who those people
8 are?

9 DR. LLOYD: I was not -- no, I probably do not
10 know those people.

11 SENATOR ASHBURN: You were not the one?

12 DR. LLOYD: At that time I was there to phase it
13 out, but not to put it in. But again --

14 SENATOR ASHBURN: Do you believe there ought to
15 be personal liability to individuals in government who are
16 responsible for the poisoning of the waters of the our state?

17 DR. LLOYD: I think there should be some
18 accountability if it's clearly what is going on.

19 SENATOR ASHBURN: No, I'm talking about personal
20 liability. If you're an executive in a corporation, and you are
21 responsible for such an outrageous affront to the public's
22 health, you would be prosecuted in the courts.

23 Do you believe that same liability ought to exist
24 to officers of government?

25 DR. LLOYD: I am not a lawyer, so I wouldn't like
26 to --

27 SENATOR ASHBURN: You don't have an opinion on
28 that.

1 So, the answer, I mean, my interpretation of that
2 is, you believe there ought to be a different standard.

3 DR. LLOYD: I didn't that say that. I said I'm
4 not, fortunately in some cases, I'm not a lawyer, because as
5 I've seen the interpretation in legal terms, they can be very,
6 very different. So, when you ask about liability, I'm not sure
7 what that means.

8 Accountability, yes. Yes, accountability.

9 SENATOR ASHBURN: Let me ask you about the
10 Endangered Species Act. If you had vast authority to
11 single-handedly deal with the Endangered Species Act, what would
12 you do with the laws that exist today in California?

13 DR. LLOYD: I think the -- clearly, this is a
14 tough area for me to address comprehensively.

15 I think a lot of these, the regulations to
16 protect the environment, they are borne out of a need, an
17 environmental need.

18 The interpretation and the carrying out of some
19 of the legislation laws are where you get into the some of the
20 difficulties.

21 So I think, again, you have to have the balance
22 with some of the endangered species, because it's true, if you
23 truly have an endangered species, and you're going to lose that
24 species, you can never get it back. That is something that we
25 have to protect.

26 And as head of the Environmental Protection
27 Agency in California, I would take that mission very seriously.

28 SENATOR ASHBURN: You're a scientist. Do you

1 believe that the government can grant ever-lasting life to an
2 individual species? That, in other words, evolution can't exist
3 for the species?

4 DR. LLOYD: It cannot maybe guarantee
5 ever-lasting life, but it sure can curtail activities which will
6 ensure the killing or the cessation of that species.

7 SENATOR ASHBURN: I guess I've already asked you
8 this, but what about the actions of government agencies that
9 actually result in the death and destruction of greater numbers
10 of the species because of the involvement of the government?

11 The Desert Tortoise, for example, which has been
12 confined now to special preserves which have made it prime
13 picking ground for the number one predator to the Desert
14 Tortoise, which is the raven. The raven now is quite happy. He
15 just sits around there, and they're all gathered together, all
16 those tortoises. He just swoops down and picks off the one he
17 wants. He doesn't have to go out there hunting them over the
18 vast desert of California. The government did that.

19 How about the Tulare Pseudobahia weed that was
20 killed off by the Department of Fish and Game in California
21 because they thought they knew better than the ranchers and the
22 cattlemen that had been preserving that interesting plant for
23 decades? And it was killed off because of the actions of
24 government.

25 Should there be liability for government
26 officials who do that?

27 CHAIRMAN PERATA: If I might suggest, that would
28 be a matter of legislation.

1 SENATOR ASHBURN: Well, yes and no,
2 Mr. President. The laws are there, but this is an individual
3 who's going to have the critical role in enforcing the laws, and
4 I'm interested in his perspectives on whether the laws are
5 balanced as they are. If not, how I might go about changing
6 them.

7 But critically important is how you view your
8 role.

9 DR. LLOYD: I'll get back to your earlier
10 comment. I think that people who knowingly create problems
11 should be held accountable. That's the question. And whether
12 it's in the government or whether it's in the private sector.

13 That would be my answer on that.

14 SENATOR ASHBURN: And finally, we have essential
15 military facilities within California. The military bases, as
16 you know, are all under review as part of the national process.
17 On a bipartisan basis, I believe that every Member of this
18 Legislature cares about the military bases and the importance of
19 their role and operation.

20 There has been a good working group on this issue
21 involving the military and the Cal EPA because there are issues
22 of environmental concern with these bases and the cleanup of
23 bases.

24 Would you be interested in continuing the work of
25 that?

26 DR. LLOYD: Very much. I was surprised to see
27 that a third of all the bases in the states are in California.
28 So obviously, it's a significant impact on the economy of the

1 state. So very definitely I want to continue that working
2 relationship.

3 SENATOR ASHBURN: Great. Thank you very much. I
4 appreciate it.

5 CHAIRMAN PERATA: Senator Cedillo.

6 SENATOR CEDILLO: Let me just go back to this
7 theme and be very direct to you.

8 Do you believe it's your role to comply with the
9 law?

10 DR. LLOYD: Yes.

11 SENATOR CEDILLO: I think that answers the
12 question. I think it's for us to determine what laws we present
13 to you. Once those laws are presented to you, you will comply
14 with the law?

15 DR. LLOYD: Of course.

16 SENATOR CEDILLO: I appreciate that, because
17 we've had other people before us who felt that if they didn't
18 like the law, they'd go ahead and do something else, which is
19 why they're not before us again.

20 Let's extend that, though, because it's part of
21 the same discussion. There can be adverse or unintended
22 consequences of changes of law on the environment. I think my
23 colleague pointed out a series of unintended consequences. You
24 create a quarantine; you think you're creating a preserve for a
25 specific species, and you find you actually placed them in
26 peril.

27 It would be your role to note that to the
28 Legislature and to the Governor, that this is an observable

1 unintended consequence.

2 DR. LLOYD: Very definitely. I've been asked
3 before. As a scientist, if I get new information, my ideas
4 should change. People say, "Well, you changed your mind."
5 Clearly, if you've got new data you should change your mind.

6 And I think on the issues we had before, the
7 MTBE, as we got more information, then we modified that
8 behavior.

9 SENATOR CEDILLO: In other areas that may seem
10 unrelated, that may seem to be impacting other policy areas, but
11 would have a measurable consequence on our environment, our air
12 that we breathe, for example, created by pollution.

13 DR. LLOYD: Senator Cedillo, definitely. I just
14 had a briefing with the Governor this morning on ports and goods
15 movement. And that's a classic case where Secretary McPeak and
16 myself, we're heading up a cabinet-level group to look at that.
17 In fact, we're marrying environmental impacts of port growth.
18 I'm not saying that we should stop the port growth, but how do
19 we encourage, in fact, port growth but we're not going to
20 destroy the environment?

21 And that's a classic example where we're working
22 very closely together, tough issues, but as we're competing with
23 the rest of the world, as we're more outsourcing stuff, there's
24 more stuff coming back through California. And so we want to
25 make sure that in fact we do this in unison.

26 So, very definitely. One of the nice things I
27 find in working with the Governor's cabinet, we have this
28 relationship. We can address these issues which impact.

1 Obviously security is another one affecting the ports.

2 And so, we're learning a lot, and we're doing
3 this. And we will -- just starting a long the process involving
4 all the stakeholders.

5 SENATOR CEDILLO: So then let's go back to
6 pollution. So, the strategy's related to an effort -- I know
7 Ms. Pavley has a proposal to help enhance the number of hybrids
8 and EVs brought onto our highways.

9 DR. LLOYD: Yes.

10 SENATOR CEDILLO: More few efficiency vehicles.
11 Those are all strategies designed to help improve our air; is
12 that correct?

13 DR. LLOYD: Correct. And I think, again, when
14 you look at many of technologies that they're trying to clean up
15 the air, as well as stretch out our gasoline and diversify our
16 fuels that we can use in vehicles, and I'm more than a big
17 proponent if you can get actually to a zero emission, as close
18 to that as possible. Then we do away with a lot of the
19 problems. If in fact we had something which was zero emitting
20 from the start, we wouldn't have to worry about emissions as the
21 vehicles get older. So, that to me is still very much a go.
22 It's going to take time to get there.

23 That's one of the exciting things about the
24 Governor's Hydrogen Highway Network. You're not abandoning
25 anything, but you've got a short-term, you've got a medium-term,
26 and you've got a long-term project there.

27 So, all of these are trying to work together to
28 clean up the air, but at the same time you can maybe increase

1 traffic and not decrease the environment. Congestion is a piece
2 of it.

3 SENATOR BATTIN: Let's further the discussion we
4 had in my office yesterday.

5 I think I was pretty frank with you when I was
6 discussing with you my frustration in an Appropriations hearing
7 that we had a year ago or a year before regarding the Pavley
8 bill dealing with SUVs. It wasn't the policy of the bill. As I
9 told you then, we disagree. We're in the business of
10 disagreements, really. We disagree all the time. And we
11 respect each other's right to be wrong, and they respect mine,
12 and I respect theirs.

13 What frustrated me was at that hearing, there was
14 an attempt -- it should have rightly gone, the bill should have
15 rightly gone to our Suspense Calendar, as the Vice Chairman of
16 the Appropriations Committee at the time. And we had a person
17 from the California Air Resources Board, which at the time you
18 headed, testify in committee that there was no cost to this
19 bill; that CARB would absorb all the cost into its operating
20 budget, which just isn't true. Wasn't true then, wasn't true
21 when it was said, wasn't true after it happened. It just wasn't
22 true.

23 What I was very frustrated about wasn't that we
24 had difference of opinion on the bill. It was the fact that we
25 had a person from a state agency deliberately misleading, or
26 trying to mislead the Legislature in their testimony.

27 You're in a position here that oversees a lot of
28 state agencies. And I need your assurance that it will be well

1 known that, whether you agree with what someone's asking you or
2 not, to try to avoid a question, or trying to basically not tell
3 the truth to avoid going to a suspense calendar in a committee
4 just simply won't be tolerated.

5 Can I expect that?

6 DR. LLOYD: Yes.

7 On that particular, I did go back and check that.
8 Of course, I was aware of the issue.

9 I think it was hoped that, in fact, it could be
10 done with existing resources by partitioning those around. As I
11 said to you yesterday, they had to go to outside help, outside
12 contracts, to get some of that work done.

13 But you made a good point, and yeah, you have my
14 assurance. Obviously, I feel I've got another level of
15 obligation, being a member of the Governor's cabinet, to look at
16 all those issues and to work with you.

17 SENATOR BATTIN: I appreciate that. I mean, what
18 happens is, it just creates distrust.

19 I spent four years vice chairing that committee,
20 and every week we would do our darndest to come up with an
21 understanding of how much a particular bill cost. The
22 Republicans come up with their estimates, Democrats come up with
23 their estimates, Finance comes up with their estimates. And
24 everybody kind of does it very similarly but also has different
25 philosophies. But generally we all respect what each other is
26 doing.

27 Nobody agreed with CARB on that. And what
28 happened was, every single time then the department was up in

1 front of that committee, it elicited some sarcastic remark from
2 me, and I just simply did not believe anymore what they said.
3 And I just don't want to see that happening.

4 It's not a partisan issue at all. This could
5 happen with a Republican administration to a Democrat saying,
6 "Well, we're going to, because we know where that Member's
7 going, we're going to then give some information that we know is
8 not accurate because we're going to try to avoid, in this
9 particular case, going to Suspense Calendar in Appropriations."
10 Which, by the way, wouldn't have made a damn bit of difference
11 on the outcome of the bill anyway. So, it was just a completely
12 irrelevant thing to do.

13 That has sat with me for a long time, and it's
14 something that, you know, I have an expectation when we're
15 getting testimony in the committee, especially from someone who
16 represents the state -- we're making public policy -- that I'm
17 being told the truth. And I need to make sure that that's the
18 case.

19 DR. LLOYD: In fact at that time I did get a call
20 from at that time it was Assemblyman Campbell, I think,
21 expressing some concern about diverting resources to work on
22 climate change. I assured him that would not happen.

23 I would also say that during that period of time,
24 there was a net loss of staff at the Air Resources Board because
25 of the cutback.

26 But your fundamental point is well taken, and I
27 make that commitment.

28 SENATOR BATTIN: Thank you.

1 CHAIRMAN PERATA: I would suggest that that CARB
2 employee probably should work for Caltrans if they're going to
3 be disingenuous.

4 [Laughter.]

5 CHAIRMAN PERATA: I've never seen a collection of
6 environmental terrorists like those present here today who are
7 here in support. So, I'd like to ask all those who are in
8 support of this nominee to come forward, and ask you to be pithy
9 and not redundant.

10 Alan, please stay. This will be embarrassing,
11 but just try to hang in there.

12 MR. WHITE: Senator, Members, John White from the
13 Center for Energy Efficiency and Renewable Technologies.

14 I've known Alan for 32 years since our -- we
15 first met at UC Riverside, where he was a scientist on the
16 faculty of the staff of the statewide Air Pollution Research
17 Center.

18 He brings a wealth of experience -- private
19 sector, public sector. Sound science is in his blood. His
20 strengths have been in the air quality leadership he's provided,
21 but as the Senator pointed out, the Senate's package this
22 morning illustrates the priority of the water issues. And I
23 think his talents and his commitment to science and public
24 participation will serve him well in providing leadership in
25 these other very important Cal EPA areas.

26 So, we ask for your Aye vote.

27 CHAIRMAN PERATA: Thank you.

28 MR. CAMPBELL: Chairman Perata, Members of the

1 Committee, my name is Todd Campbell. I'm the Policy and Science
2 Director for the Coalition for Clean Air, and a City Council
3 member for the City of Burbank.

4 As a representative of a community that is
5 directly impacted by Chromium 6, and someone who has worked with
6 Dr. Lloyd for about five years now, I think he brings a lot of
7 credibility. He brought a lot of credibility to the Air
8 Resources Board, and I think he will restore that credibility
9 also to the Environmental Protection Agency.

10 I ask for you to confirm him today. Thank you.

11 CHAIRMAN PERATA: Thank you for being here.

12 MS. WILLIAMS: Good afternoon. My name is
13 Stephanie Williams. I'm Senior Vice President of the California
14 Trucking Association, and we're here to ask for your Aye vote on
15 this confirmation.

16 Thank you.

17 CHAIRMAN PERATA: Thank you.

18 MS. NOTTHOFF: Ann Notthoff with the Natural
19 Resources Defense Council.

20 We've had the pleasure to work with Dr. Lloyd on
21 air issues for the past several years, and look forward to
22 working with you on pesticides, water, and all the other things
23 that will be under your jurisdiction now.

24 We support his confirmation.

25 CHAIRMAN PERATA: Thank you.

26 MS. HOLMES-GEN: I'm Bonnie Holmes-Gen on behalf
27 of the American Lung Association of California, and the
28 California Thoracic Society.

1 And I want to say that the American Lung
2 Association does not usually make endorsements for state agency
3 positions, but we had to make an exception because Dr. Lloyd is
4 such an exceptional individual. We consider him a strong leader
5 on behalf of improved air quality and public health.

6 And among his many accomplishments, many
7 important things such as reducing diesel pollution, and adopting
8 ground-breaking particulate matter standards for California, he
9 also built to the agency's community health and children's
10 health protection programs, which are very important to us. So,
11 I wanted to make note of that important accomplishment.

12 We don't always agree with Dr. Lloyd, but he's
13 always accessible. He always will take time to hear our
14 opinions, and we believe that he truly care about public health
15 and the environment.

16 We urge his adoption as Agency Secretary today.

17 CHAIRMAN PERATA: We're not going to adopt him.

18 [Laughter.]

19 MS. HOLMES-GEN: Okay, how about approval.

20 CHAIRMAN PERATA: Thank you.

21 MR. MAGAVERN: Bill Magavern with Sierra Club
22 California.

23 We applaud the Governor's nomination of Alan
24 Lloyd for Secretary of Cal EPA. We think he's done a fine job
25 at the Air Board and look forward to working with him further as
26 Secretary of Cal EPA.

27 We support confirmation.

28 CHAIRMAN PERATA: Thank you.

1 MR. KALB: Dan Kalb, representing the Union of
2 Concerned Scientists.

3 It gives us a particular pleasure to support for
4 this particular office an incredible, and credible, and
5 dedicated scientist for this position of head of Cal EPA, and we
6 urge your support.

7 Thank you.

8 CHAIRMAN PERATA: Thank you.

9 MS. WILLIAMS: Jane Williams, California
10 Communities Against Toxics. We have 70 members across the state
11 that work on a wide variety of community-based environmental
12 justice, environmental health issues.

13 We're here today to support Dr. Lloyd's
14 appointment. We have worked with him very, very successfully
15 over the last few years on ARB's Environmental Justice
16 Stakeholders Group, and we look forward to continuing the work
17 on environmental justice in the new administration.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 MS. SURRAL: Hi, good afternoon. My name's
21 Robina Surrall, and I'm the Executive Director of California Safe
22 Schools, a children's environmental health coalition.

23 And I've had the honor to work with over the five
24 to six years with Dr. Lloyd and I really want to applaud his
25 ceaseless efforts to protect human health, and the environment,
26 and our ecosystem. And I look forward to working with him in
27 the future.

28 I thank you so much and support his nomination.

1 CHAIRMAN PERATA: Thank you.

2 MR. MAGNANI: Mr. Chair and Members, thank you
3 for letting me speak today. Bruce Magnani with the California
4 Chamber of Commerce.

5 We're here to support the appointment of
6 Dr. Lloyd as Secretary of the Environmental Protection Agency.
7 We have experience working with him at the Air Board. We find
8 him to be an individual of very high integrity. If we disagree,
9 he still gives us an opportunity to hear our voice, and we
10 appreciate it and look forward to working with him in the
11 future.

12 Thank you.

13 CHAIRMAN PERATA: Thank you.

14 MS. DEL CHIARO: Hi, my name is Bernadette Del
15 Chiaro. I represent Environment California, with over 80,000
16 members across the state.

17 We are here to support the nomination of
18 Dr. Lloyd, but always one to stand out in a crowd, we have a
19 question for Dr. Lloyd, if we could pose it to him.

20 The question is with regards to water quality and
21 quantity, something that I appreciate has been discussed at
22 length today so far, specifically related to the chemical
23 perchlorate, a component of rocket fuel, that right now has
24 contaminated over a thousand drinking water wells in California
25 as well as the Colorado River. According to U.S. EPA, as well
26 as the National Academy of Sciences, perchlorate causes harm to
27 the thyroid gland, is potentially harmful, especially to women
28 of child-bearing -- pregnant women and children.

1 A month ago, a coalition of environmental and
2 community groups sent a petition to OEHA, Office of Health
3 Assessment within Cal EPA, requesting that the state revise its
4 public health goal for perchlorate in drinking water.

5 So the question that will be on the Secretary's
6 plate once he -- if confirmed will be whether he will direct
7 OEHA to revise the current public health goal in light of the
8 latest science around perchlorate.

9 CHAIRMAN PERATA: It's the province of the
10 Committee, jealously guarded, to ask questions.

11 You may respond in writing if you'd like.

12 MS. DEL CHIARO: Okay, thank you very much.

13 DR. LLOYD: I will be happy to do so.

14 MS. TAKVORIAN: Good afternoon. My name is
15 Diane Takvorian. I'm the Director of the Environmental Health
16 Coalition. We are a 25-year-old environmental justice
17 organization in the San Diego-Tijuana region.

18 We're very pleased to ask you to confirm Dr. Alan
19 Lloyd for the Secretary of Cal EPA. I think one of the -- that
20 I would concur with everything that folks have said about why
21 Dr. Lloyd is such an excellent choice for this position, but
22 mostly I want to emphasize that I think he really understands
23 that there has to be a connection between a policy that gets
24 made here and what happens on the ground in grassroots
25 communities.

26 And so, I'm very pleased to be able to say that
27 he has demonstrated that in San Diego, in Barrio Logan, which is
28 a low-income Latino community which is suffering from some of

1 the greatest pollution in San Diego. He -- under his
2 leadership, the ARB was able to shut down a source of Chrom. 6,
3 and now the asthmatic children in the community are doing much
4 better as a result of that. I expect that he will use that
5 influence and his knowledge across the breadth of Cal EPA
6 agencies.

7 So, I urge you to confirm him. Thank you very
8 much.

9 CHAIRMAN PERATA: Thank you.

10 MS. PHILLIPS: I'm Kathryn Phillips with
11 Environmental Defense.

12 I'll just say very briefly that we
13 enthusiastically, and without bound, support his appointment to
14 the EPA. Thanks.

15 CHAIRMAN PERATA: You know, if you keep this up,
16 he's going to walk home along the top of the Sacramento River.

17 [Laughter.]

18 MR. MARQUEZ: Good afternoon my name is Jesse
19 Marquez. I'm the Executive Director of the Coalition for a Safe
20 Environment.

21 We're here to support and endorse the nomination
22 of Dr. Alan Lloyd.

23 Our story's a little bit different in terms of
24 our organization. We're one of the baby environmental groups.
25 We only started approximately three years ago.

26 But what has brought us into the limelight of
27 things is that in Wilmington, that is where the Port of Los
28 Angeles is located. And the Port of L.A. is the number one

1 largest air pollution source in Southern California. Our
2 neighbor is the Port of the Long Beach, the second largest
3 source. We also have six oil refineries in Wilmington, amongst
4 38 other industries in our area.

5 But what has made something unique for us is that
6 in all the meetings these last three years that I've attended
7 where Dr. Lloyd has been present, where he has spearheaded
8 committees, or public forums, or public hearings, he has allowed
9 us to always be there to speak.

10 At the last event that he attended in Los Angeles
11 with Secretary Sunne Wright McPeak, our organization was one of
12 only five allowed to be able to speak equally with some of the
13 bigger organizations because our concerns come from the heart
14 and come from the bottom.

15 At the same time at every meeting, typically at
16 the Port of Long Beach, Port of L.A., we're given a three-minute
17 limitation.

18 But in his position in this new title and
19 capacity, it requires a person of compassion and understanding.
20 Those of us that come from families whose members have died, who
21 have friends that are in acute hospitals right now who will
22 never walk out of there alive, he's always allowed us those
23 extra few minutes to express our concerns.

24 And when it came up to the Goods Movement
25 Meeting, we were asked to do a presentation. Well, we typed up
26 the presentation. But his staff also asked us that, whatever we
27 were going to state in that presentation to identify problems,
28 but to also identify solutions and recommendations.

1 And that's what makes a good leader, because you
2 can sit in your office, and you can be there with your staff,
3 but oftentimes out there in the community, out there in the
4 public, there are many of us who know many things. And we can
5 share those experiences, we can share that research so that we
6 can address a water contamination plan.

7 So, yes, that water might be one solution, but if
8 an insect comes on a cargo container off the port and destroys a
9 crop, where was that accountability? Or, dealing with public
10 health, we have the West Nile virus killing people right here.
11 That bug came from a ship from Asia.

12 So, it requires someone of his capacity and
13 understanding to listen to us because sometimes we're
14 identifying the problems.

15 And yes, invite us to come to these sessions to
16 speak because we can often provide recommendations and
17 solutions. And that's what it takes, is being a team, working
18 with the public, and working with the community.

19 I'll just leave some of this information about
20 our organization for you to review.

21 CHAIRMAN PERATA: Thank you. Thanks for being
22 here.

23 MS. JAMES: Thank you, Mr. Chairman, Members of
24 the Committee. I'm a small business owner. My name's Wendy
25 James from Burbank. My company, the Better World Group, does a
26 lot of work with environmental organizations. We also worked
27 with the Schwarzenegger administration in crafting, finalizing,
28 the Environmental Action Plan.

1 And I frankly can't think of another person who
2 would be more capable at fully implementing that Environmental
3 Action Plan, and I enthusiastically support his confirmation.

4 CHAIRMAN PERATA: Thank you.

5 MS. TUCK: Good afternoon. Cindy Tuck with the
6 California Council for Environmental and Economic Balance.

7 CCEEB is glad to be here today to support his
8 appointment. I just wanted to note that we have found Secretary
9 Lloyd to be very committed to environmental protection,
10 committed to having very good public processes, and committed to
11 using good science. At the same time, we know that he's
12 sensitive to the need to improve business climate and to
13 maintain and generate new jobs.

14 We urge your Aye vote. Thank you.

15 CHAIRMAN PERATA: Thank you.

16 MR. HORU: Good afternoon. My name is Shabaka
17 Horu. I'm with the Community Coalition for Change, an
18 environmental group in South Los Angeles.

19 This is the first time I've ever done anything
20 like this, and it's an honor to sit here before you and
21 recommend a positive confirmation of Dr. Lloyd.

22 Thank you very much.

23 CHAIRMAN PERATA: Thank you for being here.

24 MR. MODISETTE: Thank you, Mr. Chair and
25 Members. Dave Modisette with the California Electric
26 Transportation Coalition. We're a nonprofit business
27 association of California companies working on electric
28 technologies.

1 We'd urge your Aye vote on Dr. Lloyd's
2 confirmation.

3 CHAIRMAN PERATA: Thank you.

4 MS. FOLEY: Mr. Chairman and Members of the
5 Rules Committee, my name is Mary Jane Foley. I'm here today
6 representing the Southern California Alliance of Publicly Owned
7 Treatment Works, which are 62 water and waste water agencies in
8 Southern California.

9 It's an honor to support the nomination of
10 Mr. Lloyd as Secretary of Environmental Affairs [sic]. We have,
11 as public agencies, worked so well on a lot of the very
12 difficult air regulations and have always gotten great
13 leadership from Mr. Lloyd and reasonable and practical
14 solutions.

15 We're happy we happened to be in town today and
16 could come by and do this.

17 Thank you.

18 CHAIRMAN PERATA: Thank you.

19 MS. SHEEHAN: Good afternoon, Chairman Perata
20 and Members of the commission. My name is Linda Sheehan. I'm
21 the Executive Director of the California Coastkeeper Alliance.
22 I represent water keeper groups from San Diego to Humboldt Bay.
23 Many of them have worked with the Air Resources Board, some have
24 actually worked for the Air Resources Board. All have been
25 extremely impressed with the expertise and leadership of
26 Dr. Lloyd. And we look forward to working with Dr. Lloyd on
27 many water quality issues that have been discussed here today.

28 So, we urge your support. Thank you.

1 CHAIRMAN PERATA: Thank you.

2 I dare ask, is there anybody here in opposition?
3 Didn't think so.

4 Doctor, I don't know if you can top any of that,
5 but you're more than welcome to try.

6 DR. LLOYD: No, thank you. I'm very humbled by
7 those comments, and take the comments I get from the Committee
8 real seriously, and looking to work with you, to carry out my
9 responsibilities, and working with the Governor and carrying out
10 his Environmental Action Plan.

11 It's an exciting time, many challenges, but I'm
12 here to work with you and look forward to it.

13 CHAIRMAN PERATA: Thank you.

14 With that, we have a motion by Senator Cedillo to
15 approve. Call the roll.

16 SECRETARY WEBB: Senator Ashburn.

17 SENATOR ASHBURN: Aye.

18 SECRETARY WEBB: Ashburn Aye. Senator Cedillo.

19 SENATOR CEDILLO: Aye.

20 SECRETARY WEBB: Cedillo Aye. Senator Battin.

21 SENATOR BATTIN: Aye.

22 SECRETARY WEBB: Battin Aye. Senator Perata.

23 CHAIRMAN PERATA: Aye.

24 SECRETARY WEBB: Perata Aye. Four to zero.

25 CHAIRMAN PERATA: Congratulations.

26 DR. LLOYD: Thank you very much.

27 CHAIRMAN PERATA: We'll understand if some of
28 you would like to leave.

1 If Rachel Montes would come forward, please.
2 Work your way through.

3 Ms. Montes is a member of the California State
4 Lottery Commission.

5 Feel free to open when you're ready.

6 MS. MONTES: Okay. Good afternoon, Chairman
7 Perata and Committee Members.

8 My name is Rachel Montes. Thank you for this
9 opportunity to briefly address the commission. And I, too,
10 would like to introduce a person in my life who has been the
11 pillar of my strength, and that's my husband, Mel Montes.

12 I am the first generation United States citizen
13 of a pioneer family that settled in the city of El Monte in the
14 1900s.

15 I have been in business for over 35 years, but
16 aside owning my own business in the city of El Monte, I also
17 served in the capacity of a community liaison for the school
18 district, Mountain View School District in the city of El Monte.

19 As a city clerk, I also was a two-year term. In
20 the middle of my term I decided to run for mayor, and needless
21 to say, I was elected. So, both positions are elected
22 positions. For two consecutive years in our city we have terms
23 for mayors. It's a two-year term, so I served two consecutive
24 terms.

25 So as you can see, I have spent a great deal of
26 my time, energy, and devotion, my passion, serving the community
27 of my city. But my appointment to the Lottery Commission
28 provides me with an opportunity to expand my commitment to

1 public service.

2 My vast experience in serving in the people of El
3 Monte for so many years has been very critical in preparing me
4 for this position as the Commissioner for the Lottery for the
5 people of California. My responsibilities in this role I gladly
6 welcome.

7 You have in front of you the details of my
8 short and my long terms for the State of California Lottery
9 Commission. I believe with my strong work ethics, and also my
10 proven record of success, and my commitment to achieve team
11 goals will enable me to utilize my professional skills. My
12 extensive knowledge of government operation and also the
13 leadership abilities that I have had are that what I give to the
14 role of Lottery Commissioner.

15 At this time I would like to respond to any
16 questions that the Committee has. I would like to take the time
17 to thank you for looking at my overview for my confirmation for
18 this afternoon.

19 At this time I'll take a drink of water.

20 CHAIRMAN PERATA: Thank you.

21 Members, questions?

22 Well, I have one. I don't ask you to be
23 responsive to this right now, but it's something that just came
24 to my attention recently.

25 And that is, if the Mega Millions Game is totally
26 implemented, I was told that the odds of winning are
27 approximately one to 170 million. And as I think Senator
28 McClintock said, which is about the same odds as if you didn't

1 buy a ticket at all.

2 I'd like you to kind of keep track of that,
3 because it would seem that if that word gets out, it's far less
4 attractive of a game for people to participate than not. So, I
5 just would like you to take look at that when you're on the
6 Commission.

7 MS. MONTES: Thank you so much.

8 CHAIRMAN PERATA: Any people here in support.

9 MS. MONTES: Yes, I have two individuals at this
10 time.

11 CHAIRMAN PERATA: Your husband's going to support
12 you. I don't think we've had that before. That's terrific.

13 MR. PEREZ: I'm Jose Perez, Senators. I'm the
14 publisher of the Latino Journal, and also a part of the
15 California Hispanic Chamber of Commerce Legislative Committee.

16 And obviously, we're very honored that we have a
17 very qualified Latina small business owner that has risen up in
18 civic leadership in the local community out of Los Angeles who
19 has been appointed to the commission.

20 So, we're here to urge your Aye vote. Thank you
21 very much.

22 CHAIRMAN PERATA: Thank you, sir.

23 Better be really careful what you say.

24 [Laughter.]

25 MR. MONTES: Thank you very much. My name is Mel
26 Montes. I'm here in the State Capitol for my first time in
27 support of Rachel Montes for the position of Commissioner of the
28 Lottery.

1 Thank you very much. I'll make it short and sweet.

2 CHAIRMAN PERATA: Thank you for being here.

3 That's wonderful.

4 MR. WOLSDORF: I'm not as old as that is.

5 That's 311 years old, documented, passed down in the family.

6 It's a shillelagh from Ireland.

7 CHAIRMAN PERATA: Wonderful.

8 MR. WOLSDORF: Mr. Chairman and Members of the
9 commission, my name is John Wolsdorf. Some of you know me as
10 Little John. I have not been up here for sometime because I've
11 been extremely ill.

12 I rarely do not come in support of someone. I'm
13 usually there on the opposition to show why someone shouldn't
14 be.

15 And I'm really grateful that Rachel wasn't first
16 on the agenda, because it brought to mind -- this morning I was
17 delivered a packet for me to review. And it represented some
18 press on myself. And I said I don't generally come to support
19 someone; I come to oppose them. But in this case, I was asked,
20 and it is rare for me to do so, to support Rachel.

21 My name is John Wolsdorf. I've lived in El Monte
22 since 1952. Rachel and her family came long before I did. I'm
23 going to leave these documents because I generally don't get the
24 accolades. I'm usually a guy behind the scenes, as the
25 newspaper, the L.A. Times, puts in there. I'm the switchboard
26 operator.

27 But Rachel and her family as pioneers came in as
28 small business, in the barber business, in the cosmetology

1 business. She went to work for the local school district. She
2 served as an aide in the classroom. She was active in the
3 community with the parents, from soccer, to Little League, to
4 senior projects.

5 She chose to run for city clerk, taking on a task
6 that was truly new to her. Now, being part of the
7 infrastructure of many organizations -- I'm an officer or member
8 of 174 different entities. I'm retired President of the IBEW,
9 Church and Civic Committee Chairman, State AFL-CIO, and other
10 areas of involvement in the 11 western states. And it is rare
11 to find someone like Rachel who comes up from the grassroots and
12 steps forward with no expertise, out of caring for families and
13 children.

14 And Rachel, in her gregarious manner, they didn't
15 take her seriously, but she did ask questions of the
16 infrastructure. She went and met with staff, because the bottom
17 line, she was there to serve the community, even if it was in
18 the school district, but then taking on the city clerk's job,
19 she found an antiquated system, and I believe you call it
20 Codicil -- help me out here, okay -- to bring in an expert to
21 bring our city up to the state-of-the-art. She did this against
22 the popular majority and proved to be very successful at it.
23 And it was the best thing for our city. We were antiquated.

24 Rachel then went ahead and chose, and was
25 encouraged to run for mayor, and it was unprecedented at the
26 amount of votes that she received. She ran, and she was part of
27 the community, part of the infrastructure. Did not always agree
28 with her. I'm known to be very vocal, but I respected her

1 decisions. She always had an open door policy. She would meet
2 with a city employee, a community person, a civic organization.
3 She would put meetings together whether she agreed or not with
4 the philosophy, for she had greater responsibility, as she said,
5 to have an open door.

6 And that is why I'm here today, because Rachel
7 Montes is being asked to serve in the public sector seat. She
8 brings to the table the expertise just by public documentation:
9 A pioneer family, grassroots, small businesswoman, has worked
10 within education, as an elected official been responsible for
11 the fiscal budget and activities in a community, and has been
12 very, very successful.

13 She's been well received by her peers throughout
14 L.A. County when she retired with many accolades, and to this
15 day she's well respected within the community. And that is why
16 her nomination has been brought before you.

17 And one of those rare occasions, Members of the
18 Committee, I respectfully and humbly ask that you unanimously
19 support Rachel Montes in this appointment.

20 Thank you.

21 I would like to submit so that -- I rarely do
22 this -- these are the documents so you can see that my
23 involvement was well recognized by someone else that is equally
24 involved.

25 CHAIRMAN PERATA: Give them to the Sergeant.

26 MR. WOLSDORF: I will do so, Mr. Chairman.

27 CHAIRMAN PERATA: Thank you very much.

28 We're all finished. Thank you, that's perfect.

1 SENATOR ASHBURN: I just have one question.

2 It's nice to meet you. I don't know about the
3 other Senators, but almost everywhere I go in my territory, I
4 hear people asking about the Lottery, because what people
5 remember is that the kids and the schools were supposed to get
6 the money.

7 And so, I guess what I'm saying to you is that
8 the accountability for this program is critical. And people
9 have high expectations that our Lottery program is going to be
10 fair, and that the children are going to benefit, as it was
11 intended that they be.

12 I don't know you, and I don't know except what I
13 heard a little bit and what I've read, about your role in the
14 city government.

15 MS. MONTES: I went to your office yesterday. I
16 missed you.

17 SENATOR ASHBURN: Right. I was not here, and I
18 apologize.

19 MS. MONTES: I tried to attempt to talk to you.

20 SENATOR ASHBURN: And I was intending to be back
21 in the Capitol yesterday, but my daughter we thought had broken
22 her wrist, and so I was in the doctor's office with her
23 yesterday afternoon.

24 Anyway, what I'm most concerned about is your
25 willingness to take on so-called experts, people who, you know,
26 are the staff of the department that you're going to be a
27 commissioner for, experts from other states or locales, people
28 who hold themselves out as experts.

1 I want to just encourage you to ask tough
2 questions and not to be afraid to take on anybody for what's
3 right.

4 Have you ever had an experience like that as
5 mayor?

6 MS. MONTES: Yes, I have. Yes, I have.

7 SENATOR ASHBURN: I suspected.

8 MS. MONTES: I really appreciate your comments, I
9 really do. Thank you. And I'm sorry I missed you yesterday.

10 SENATOR ASHBURN: And I'm sorry, too, and I
11 apologize to you.

12 But I wish you all the best, and don't ever be
13 afraid to take on the tough ones.

14 MS. MONTES: Thank you so much.

15 CHAIRMAN PERATA: We will take that as a motion
16 to confirm.

17 SENATOR ASHBURN: It is.

18 CHAIRMAN PERATA: Call the roll.

19 SECRETARY WEBB: Senator Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Senator Cedillo.

22 SENATOR CEDILLO: Aye.

23 SECRETARY WEBB: Cedillo Aye. Senator Battin.

24 SENATOR BATTIN: Aye.

25 SECRETARY WEBB: Battin Aye. Senator Perata.

26 CHAIRMAN PERATA: Aye.

27 SECRETARY WEBB: Perata Aye. Four to zero.

28 CHAIRMAN PERATA: Congratulations.

1 MS. MONTES: Thank you.

2 [Thereupon this portion of the
3 Senate Rules Committee hearing
4 was terminated at approximately
5 2:45 P.M.]

6 --ooOoo--
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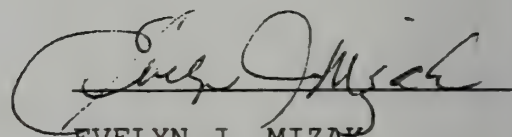
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of March, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



J. Lloyd, Ph.D.
Secretary

Arnold Schwarzenegger
Governor

March 2, 2005

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

Dear Ms. Sabelhaus:

I appreciate the opportunity to provide Senator Perata and his colleagues on the Senate Rules Committee an indication of my goals as the Secretary for Environmental Protection, as well as answer the Chairman's specific questions. I am deeply honored that Governor Schwarzenegger extended me the great responsibility and privilege of serving him and the people of California as Secretary.

An important part of the Secretary's responsibility is to provide policy direction and coordination to the 15 independent boards, departments, and office (BDOs) including the nine Regional Water Quality Control Boards (RWQCBs) within the California Environmental Protection Agency (Cal/EPA). Obviously this task can be challenging, but it is essential to assure that environmental policy is consistent across organizations and that "cross media" issues be approached in a coordinated manner.

I am deeply committed to fulfilling this responsibility and carrying out the environmental policies and goals the Governor has articulated, including implementing California's stringent air, water quality, and toxics laws. I fully concur with the Governor's view that economic vitality and environmental protection can coexist. Among the Governor's top priorities are the following:

- Reduction of air pollutants by 50% by 2010,
- Protect water quality and provide reliable supplies, and
- Strictly enforce the environmental laws.

In addition, I have a number of specific priorities that I will focus on during my tenure, including the following:

Improved Scientific Base for Decisions at Cal/EPA

My experience as Chairman of the Air Resources Board (ARB) has taught me the importance of using sound science in decision making. Therefore, I am instituting an external review of recognized scientific experts, including the University of California, to

Ms. Nettie Sabelhaus

March 2, 2005

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evaluate and make recommendations on the role science plays in regulatory matters across all BDOs. While this will be an ongoing process, I intend the initial evaluation with recommendations for changes be completed within six months.

Improving Coordination and Accountability

As environmental issues become more complex and our resources, in terms of personnel and funding, remain limited, it is incumbent for the Cal/EPA Boards, Departments and Offices to coordinate their statutory and regulatory obligations. As Secretary, I will make it a priority for my management team to identify and implement opportunities to operate in a cost-effective manner. This means avoiding duplication and inconsistent policies and interacting efficiently. I am convinced that we can do a better job providing certainty and predictability to the regulated community without compromising environmental quality.

Cal/EPA Agricultural Industry Advisory Group

I am initiating the formation of a joint Cal/EPA-agricultural industry advisory task force to improve communications across the various disciplines covered by Cal/EPA and identify the most effective way to achieve our objectives. We will also work with other state and federal agencies in this effort.

Brownfields

We are focusing on improving the cleanup procedure for brownfields throughout the State. Increased cooperation between the RWQCBs and the Department of Toxic Substances Control (DTSC) is necessary to improve the current cleanup process. We have just completed a memorandum of agreement between these agencies and Cal/EPA to accomplish this objective.

Fostering Environmental Technologies

Commensurate with the Governor's goal to create an improved business environment while improving environmental quality, I will be seeking opportunities to identify and encourage the development of environmental technology companies in the State of California. This will be done in the areas of cleaner fuels, hydrogen related technologies, and those technologies necessary to address climate change.

Climate Change Targets

As requested by the Governor, we are developing specific greenhouse gas reduction targets to mitigate potential climate change impact on California. Upon approval by the Governor, we will work with the relevant stakeholders to carry out the Governor's agenda.

Hydrogen Highway Network

The California Hydrogen Highway Network plan, which was the subject of an Executive Order from the Governor, is being submitted to the Governor. This blueprint plan will call for bold actions in a cooperative endeavor with the private sector to advance the goals of highways to address energy, security, diversity, and improved environmental

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quality. Hydrogen, along with the continued development and production of hybrid vehicles, is critical to future economic prosperity and protecting our environment.

Independent Boards and Commissions

The Legislature has created a number of boards and commissions to provide state government with independent policy and quasi-judicial functions. Both the California Performance Review and the Governor's Reorganization Plan Number 1 have sought to eliminate a number of these bodies.

Questions:

1. *What are your thoughts on the performance of the state's independent boards and commissions? Specifically, how well are these boards and commissions within Cal/EPA performing?*

Generally, I believe that the boards within Cal/EPA are performing their duties consistent with their statutory authority and responsibility. I might also add, that the same can be said for the departments and office within Cal/EPA.

I am of course most familiar with ARB, having served as its Chairman for more than four years. My experience with ARB has been a positive one, and I believe we have made significant progress in cleaning California's air.

I am learning quickly about the California Integrated Waste Management Board (CIWMB), the State Water Resources Control Board (SWRCB), and the RWQCBs. These boards are organized differently than ARB and have somewhat different responsibilities. Clearly, these boards have accomplished a great deal in their respective areas as well.

Upon assuming the position of Secretary, I have found it somewhat challenging to establish policy direction given the current structure. Having nearly 100 independently appointed board members does make it difficult to establish clear accountability. I believe that it is appropriate to periodically review the organizational structure of state government as Governor Schwarzenegger has done through the California Performance Review.

2. *Would you recommend that any of these boards or commissions be eliminated and their functions absorbed into your agency or departments under your agency? If so, which ones and why?*

As you know, we have been working with the California Performance Review in considering options for reorganizing state government. Part of this review has included the potential elimination of boards within Cal/EPA. I will await the Governor's decision on whether to pursue changes in our organization through a Governor's Reorganization Plan, including the elimination of boards. Therefore, I

Ms. Nettie Sabelhaus
 March 2, 2005
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believe it would be inappropriate to comment on the potential elimination of specific boards at this time.

With that said, Cal/EPA currently has a combination of boards and departments that carry out our mission. It is my opinion that both organizational structures are appropriate and effective, each with their own strengths and weaknesses. Regardless of the structure, assuring a transparent decision-making process and adequate public participation is essential.

Waivers of Waste Discharge Requirements and Reports of Waste Discharge

In 1999, the Legislature passed and Governor Davis signed Senate Bill 390 (Alpert, Chapter 686), which caused all existing waivers to expire in 2003 and gave the regional boards the option to adopt a new waiver if the waiver was conditional, terminable, lasted only five years and was not against the public interest. In 2003, the Legislature passed and Governor Davis signed Senate Bill 923 (Sher, Chapter 801), which added the requirements that any new waiver must be consistent with any applicable state or regional water quality control plan and that the waiver is in the public interest. Senate Bill 923 also required that the waiver include individual, group or watershed-based monitoring. Over twenty waivers have been granted by the regional boards, several of which have resulted in litigation.

Questions:

1. *Do you believe that all the waivers that have been granted are in the public interest? Has your agency reviewed the waiver process? Has your agency defined what is "in the public interest"?*

As you know, the Legislature vested the authority to grant waivers with RWQCBs. The statute requires the board to conclude that the waiver is in the "public interest." Therefore, Cal/EPA has not engaged in a formal review of the waiver process or attempted to define what is "in the public interest." I feel such determinations are best made based on the particular facts in the record by the entity vested with the authority. The RWQCBs have adopted waivers regarding timber and agricultural operations based on this authority and their review of the facts. Cal/EPA will continue to work with SWRCB and the RWQCBs to assure that waivers are in fact resulting in adequate protection of water quality in a consistent, rational basis.

2. *Senate Bill 923 mandates that the monitoring requirements verify the adequacy and effectiveness of the waiver's conditions. Do you believe that all the monitoring requirements verify the adequacy and effectiveness of the waiver's conditions? Has your agency reviewed the monitoring programs promulgated by the regional boards?*

Senate Bill 923 was adopted after the RWQCBs renewed their waivers to comply with Senate Bill 390 (both bills amended Water Code section 13269). It requires that waivers include monitoring requirements to verify the adequacy of waiver conditions.

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A RWQCB may waive this requirement, however, if it determines that a waived discharge does not pose a threat to water quality.

Once again, Cal/EPA has not reviewed the conditions of individual waivers to determine if they are consistent with the monitoring requirements of Senate Bill 923, since it is the responsibility of the RWQCBs. The RWQCBs indicated that most of the waivers are either of such a low threat that they do not pose a threat to water quality or have monitoring requirements that are adequate to verify waiver conditions. Waivers must be reviewed and readopted every five years to bring them up to date with new requirements.

3. *Has your agency or the regional boards evaluated the potential effects of these waivers on federal or state threatened or endangered species and can you provide us that evaluation?*

I am assured that the RWQCBs complied with the California Environmental Quality Act (CEQA) and evaluated the potential environmental effects of, including those related to endangered species, the adopted waivers. The relevant CEQA compliance documents are available at the SWRCB and the RWQCBs.

4. *Has your agency or the regional boards evaluated the potential effects of these waivers on public health and can you provide us that evaluation?*

As with endangered species concerns, I am assured that potential effects on public health were also evaluated as part of the CEQA process.

5. *When the agency adopts a waiver, it is a new agency action that has the potential to significantly affect the environment. Do you believe that the initial study under CEQA should focus on the agency's action of adopting a new waiver rather than regulating with reports of waste discharge and waste discharge requirements? Has your agency reviewed the negative declarations issued by the regional boards and their legal sufficiency?*

The RWQCB staff prepared the initial studies and CEQA compliance documents. They were reviewed for legal sufficiency by RWQCB attorneys as the RWQCB is the lead agency. Cal/EPA did not review them.

As required by CEQA, the RWQCB evaluated the potential environmental impacts of any proposed discharges that would be authorized by the waivers. It should be noted that the term "waivers" are a bit of a misnomer since conditional waivers can include regulatory requirements that are similar to the requirements that might be included in waste discharge requirements. Regulation of discharges through waste discharge requirements is an option for the RWQCBs if they determine that waivers are not appropriate.

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I believe that waivers, with adequate oversight and monitoring requirements, are appropriate regulatory approaches for discharges that qualify for enrollment. As information is gathered on these discharges, the boards maintain the option to use other tools if necessary.

6. *Many of the waivers do not require the dischargers to register directly with the regional board. How can the regional board enforce the requirements and conditions of the waiver if the identity of the dischargers and the character of the discharge are unknown to the board? Has your agency reviewed the enforcement provisions of the waivers? Has your agency concluded that the waivers are adequately enforceable, and, if so, could you provide the basis for the conclusion?*

Some waivers are structured to allow individual dischargers to form coalition groups and have the coalition group apply for coverage under the waiver without the individual coalition members being identified. Other waivers are written to apply to anyone that falls within the parameters outlined in the waiver with no intent to track those "covered" by that waiver. Nothing in these approaches limits the SWRCB's existing enforcement authority. Discharges in violation of the waiver where coalition groups are involved could result in loss of waiver coverage for the coalition group, requiring their membership to then pursue individual permits of their discharges. Similarly, individual dischargers who refuse to abide by the rules of a general waiver could be required to request an individual waiver or discharge permit. Enforcement actions could then be pursued against the individual dischargers, either for discharging without a permit or waiver or for violation of an issued permit or waiver.

Cal/EPA has not reviewed enforcement provisions of waivers. However, I am aware that waiver conditions are enforceable. Water Code section 13350 authorizes issuance of administrative civil liability for violations of waiver conditions. The penalties for such violations are the same as the penalties applicable to violations of permit terms in waste discharge requirements.

Water Quality Enforcement

From the mid- to late- 1990s, concern was expressed by the Legislative Analyst's Office, the SWRCB, and others that enforcement of clean water laws was not consistent or effective. Enforcement staff and budgets were increased to deal with these concerns. Recently, newspaper articles have chronicled enforcement problems at the Central Valley Regional Water Quality Control Board.

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Questions:

1. *How well do you believe the state and regional water quality control boards are enforcing the state's clean water laws?*

I am concerned that enforcement by the RWQCBs has been inconsistent and may not be based on greatest risk to water quality. Having said that, I recognize that the SWRCB and the RWQCBs have issued thousands of enforcement actions annually and have assessed substantial fines in the last four years. Each RWQCB establishes its own enforcement priorities in response to the region's needs. None the less, there is room for improvement. Cal/EPA is currently implementing an enforcement initiative and the RWQCBs are implementing some internal improvements.

2. *The recent revelations in the Central Valley Regional Water Quality Control Board have shown that these enforcement issues have not yet been totally resolved. How will your agency assure that water quality laws are adequately and consistently enforced?*

Cal/EPA is currently implementing an enforcement initiative that I believe will result in improvements, particularly in the area of water quality. Cal/EPA has identified the need, in the first instance, to improve our management of information in order to intelligently focus our enforcement resources on the areas of highest non-compliance and greatest environmental risk. To that end, we are enhancing the ability of our internal database systems to produce useful information and enable us to employ our enforcement resources to their highest and best use. Among other improvements, we are integrating our enforcement training to maximize delivery to the enforcement field staff in state, regional, and local government. Other examples of the ongoing efforts are provided below.

- **Enforcement Prioritization** – Given the increased caseload at the RWQCBs, sufficient resources are not available to address all violations; consequently, priorities must be established. To address this, the RWQCBs are developing a consistent statewide approach to prioritizing their enforcement actions to ensure the highest priority cases are being addressed. The SWRCB will review the adequacy of the RWQCB enforcement response on an annual basis.
- **Complaint Receipt and Tracking** - Cal/EPA is developing a centralized agency-wide complaint tracking system to enable effective tracking of complaints and their resolution.
- **Violation and Enforcement Information** – The RWQCBs are moving to a revised data system, which will include having dischargers submit monitoring data electronically. This move will begin in the fall 2005, and there will be a transition period of six to eight months to move dischargers to this electronic data submittal. This system will resolve several data workload and accuracy issues to improve efficiency, collect data not presently collected, and provide automated

Ms. Nettie Sabelhaus
 March 2, 2005
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compliance checking. The system will also enable the RWQCBs to provide a "Compliance Report Card" on the Internet scheduled for November 2005 covering discharger and RWQCB performance.

- Progressive Intervention – We are re-evaluating the oversight role of the SWRCB with respect to enforcement. The Water Code gives the SWRCB an appellate role over RWQCB actions. The SWRCB also possesses most RWQCB authorities and can act independently. These authorities enable progressive intervention by the SWRCB; something that has rarely occurred in the past, but something we are considering a measure towards more timely and appropriate enforcement.

We are in the process of identifying further improvements that can be made administratively, legislatively, and through the budget process.

Timber Harvesting and Water Quality

California forestry practices have for years been criticized as insufficient to adequately protect public trust resources such as fisheries and water quality. Eighty-five percent of the streams and rivers on the North Coast are listed as impaired under the federal Clean Water Act—almost all because of sedimentation caused by logging activities.

Questions:

1. *How is your agency working with the Resources Agency to protect water quality from timber harvesting activities? Are the two agencies working cooperatively?*

The North Coast, Central Valley, and Lahontan RWQCBs have accordingly adopted general waiver policies addressing timber harvesting, the Central Coast RWQCB is issuing individual waivers, and the North Coast RWQCB has also adopted general waste discharge requirements addressing timber operations which pose higher threats to water quality. These waivers and waste discharge requirements generally rely on the California Department of Forestry (CDF) administration of the State's Forest Practice Rules (FPRs) to ensure adequate water quality protection. However, in some instances, the RWQCBs may impose documentation, practices, and monitoring requirements that are different from and in addition to the requirements that CDF requires through its process and rules.

While the RWQCBs have worked with CDF to assure concerns are addressed, there continue to be a number of areas where the RWQCBs do not believe the CDF process adequately addresses water quality concerns. The result can be a process that is in some ways redundant and duplicative.

State law authorizes RWQCBs to disapprove timber harvest plans that could threaten impaired water bodies. The great majority of impaired water bodies' waters that could be subject to this authority are in the North Coast Region. The RWQCB and CDF have been working cooperatively to find ways to minimize the need for such a veto.

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2. *How is Cal/EPA assisting the regional and state water boards' ability to independently enforce the Porter-Cologne and federal Clean Water Acts with regards to timber harvesting?*

I believe it is essential for the RWQCBs to continue to exercise their authority to assure that water quality is protected. This issue is currently being litigated and we have strongly supported the RWQCBs in this case. At the same time, we must work with CDF to assure that a duplicative process is not created. Efforts must continue to create a process that meets the requirements of all aspects of state laws without unnecessary redundancy or unintentional conflicting objectives.

Environmental Justice

Cal/EPA has a California Environmental Justice Advisory Committee that has not met for over a year. The agency also has drafted an Environmental Justice Action Plan for which is in the process of being implemented.

Questions:

1. *Why hasn't the California Environmental Justice Advisory Committee met in over a year?*

Upon my appointment as Secretary, I reaffirmed that Environmental Justice (EJ) as one of the Agency's highest priorities. I also instructed staff to convene the California Environmental Justice Advisory Committee (CEJAC) as soon as possible to review Cal/EPA's EJ Action Plan. That meeting occurred on February 15 and the Advisory Committee will continue to meet on a quarterly basis.

2. *How and on what timeline will your agency implement the Environmental Justice Action Plan?*

Cal/EPA has embarked on a two-path process, which includes the formal, long-term planning process (EJ Strategy) and the short-term EJ Action Plan. They were developed (in April and October of 2004, respectively) under the leadership of former Secretary Tamminen based on CEJAC recommendations to Cal/EPA's Interagency Working Group (IWG).

Our EJ Action Plan is focused on precautionary approaches, multi-media cumulative impacts analysis, tools for public participation, as well as community capacity building. Based on recommendations of the CEJAC, we approved the pilot projects and working definitions for the projects. These are community-based, multi-media projects that will evaluate data and provide guidance in shaping policies to reduce risks at the community level. I will work with the heads of Cal/EPA's BDOs to expedite the completion of these projects (currently scheduled for December 2006).

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March 2, 2005
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My commitment to EJ is evident from actions taken during my tenure as the Chairman of the ARB. The ARB was the first agency in the State to adopt EJ policies and actions through a collaborative stakeholder process and has integrated those concepts throughout its internal programs. Subsequently, a Public Participation Manual and a Complaint Resolution Protocol were developed to facilitate community involvement in the decision-making process and to address community concerns.

In addition, many community projects were initiated in various parts of the State aimed at solving problems at the community-level, on-the-ground. ARB also held a two-day EJ symposium with nationally renowned leaders and scientists to educate our management and staff. Finally, a \$700,000 research study was approved to address cumulative impacts on related issues (a major concern of communities), and data gaps in quantitative evaluations. Many of these activities and what I learned from them are transferable to my new responsibilities as Secretary of Cal/EPA and to EJ programs in the other BDOs within the Agency.

I hope that the answers provided adequately address your questions. Should you have any additional questions, please feel free to contact me at 323-2514 or Ms. Patty Zwarts, Cal/EPA's Assistant Secretary for Legislation, at (916) 322-7326.

Warmest regards,



Alan C. Lloyd, Ph.D.
Agency Secretary

cc: Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 205
Sacramento, California 95814

Honorable Jim Battin, Vice Chair
Senate Rules Committee
State Capitol, Room 3067
Sacramento, California 95814

Honorable Roy Ashburn
Senate Rules Committee
State Capitol, Room 5094
Sacramento, California 95814

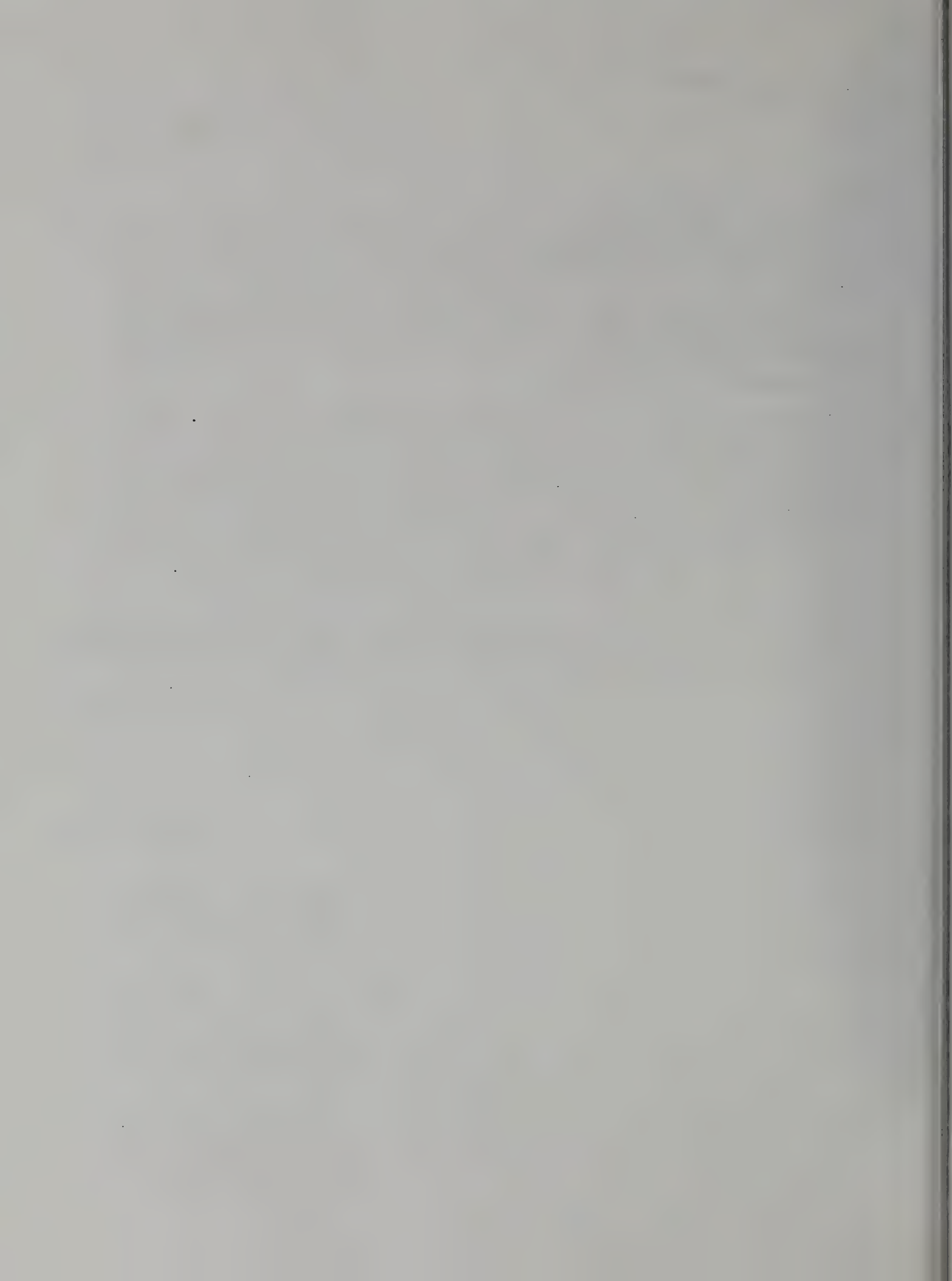
Ms. Nettie Sabelhaus

March 2, 2005

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cc: Honorable Debra Bowen
Senate Rules Committee
State Capitol, Room 4040
Sacramento, California 95814

Honorable Gilbert Cedillo
Senate Rules Committee
State Capitol, Room 5100
Sacramento, California 95814



RACHEL MONTES
COMMISSIONER
CALIFORNIA STATE LOTTERY

March 3, 2005

Honorable Don Perata, Chair,
and Members of the Senate Rules Committee

Thank you for the opportunity to present my short and long-term goals for the California State Lottery in order to achieve its mission of maximizing supplemental funding to public education.

Short term goals:

- Successfully establish the multi-state lottery game Mega Millions in California in order to potentially increase sales revenues by \$500 million annually and to offer a product that has become a "best practice" in the lottery industry.
- Strengthen our relationships and partnerships with policy-makers and stakeholders so that the Lottery can achieve its goals to increase sales.
- Ensure that the Lottery continues to pay serious attention to the concern of problem gambling by continuing to monitor the Lottery's Problem Gambling Awareness Program to assure individuals with gambling problems and their families have access to essential services.
- Ensure that the Lottery continues to comply with all laws concerning the sale of its products to the public.

Long term goals:

- Explore new ways of increasing revenues to ultimately surpass the \$1 billion that has been transferred to public education for four consecutive years.
- Seek to expand the Lottery's retailer network to include new and non traditional business establishments, such as airports, bus and train stations.
- Ensure that we continue to honor the public's trust by ensuring integrity, responsible leadership, and ethical business practices with our players, employees and various business partners.
- Continue to actively communicate with the Director and key personnel in order to maintain open lines of communication between the Commissioners and Lottery staff.

505-R

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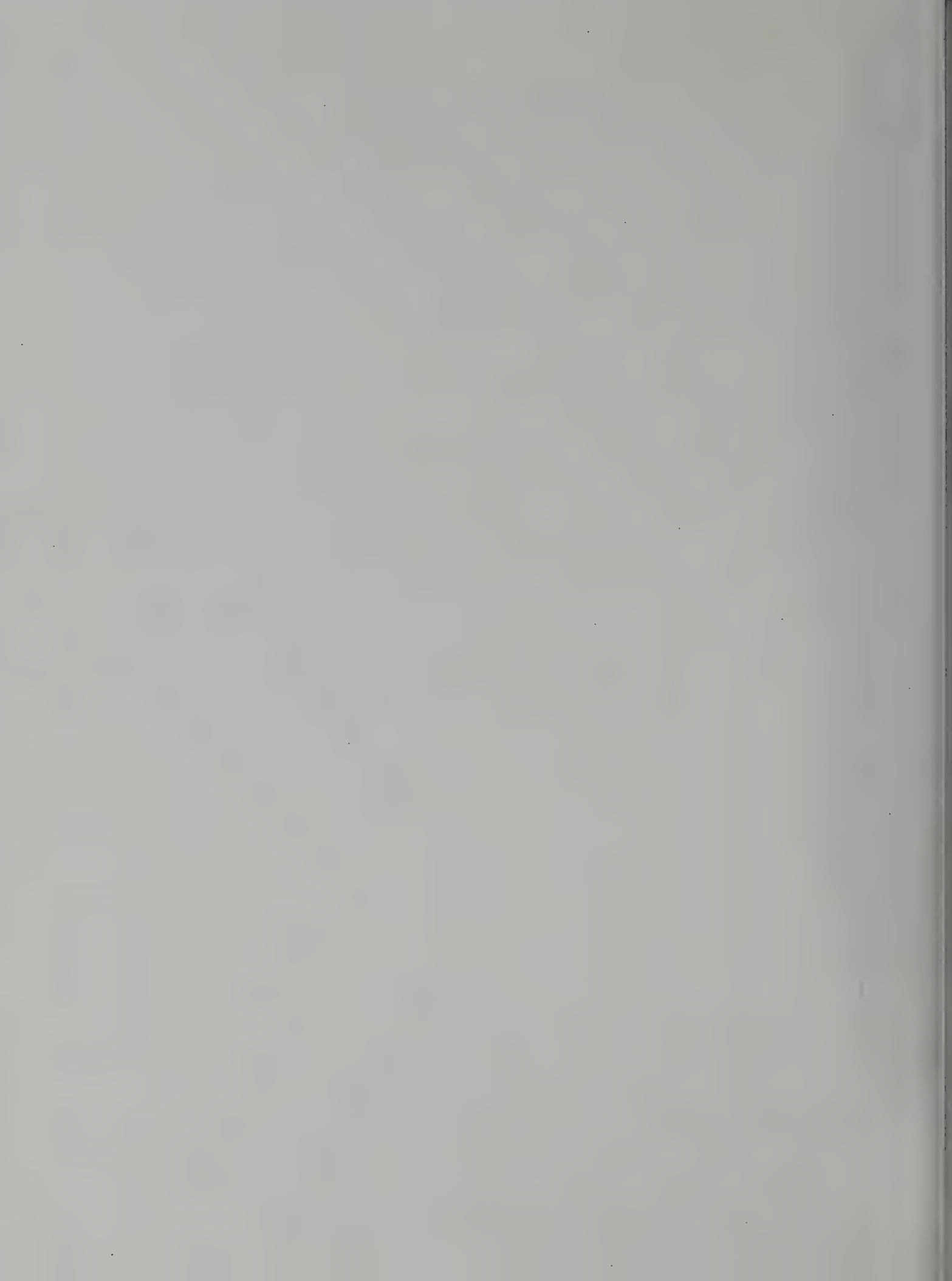
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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

BRUCE A. MCPHERSON
Secretary of State

SENATOR ABEL MALDONADO

SENATOR JEFF DENHAM

JIM MARCH
Speaking on Own Behalf

PAUL TURNER, Resident Fellow
Greenlining Institute

SHERRY HEALY
Democracy for America (DFA), Marin County Chapter

1 MARY K. SMALLEY, Member
2 Teachers' Retirement Board

3 DELORES SANCHEZ
4 California Federation of Teachers

5 DAVID LOW
6 California School Employees Association
7 California Families Against Privatizing Retirement

8 BILL COLLINS
9 California Teachers Association

10 BEVERLY CARLSON
11 CTA - Retired

12 JENNIFER BAKER
13 Faculty Association of California Community Colleges

14 LIBBY SANCHEZ
15 Teamsters
16 Laborers' International Union of North America

17 CAITLIN McCUNE
18 California Labor Federation
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Well, Senator McPherson, would you like to come forward with your entourage, the young staff you brought.

SENATOR MCPHERSON: Right.

CHAIRMAN PERATA: Senator Maldonado.

SENATOR MALDONADO: Mr. Chair and Members, it's a great honor to be here to introduce to you -- I don't think we have to introduce -- but to introduce to you our colleague.

It is an honor for me to be his State Senator, and I actually wrote a little note to Assembly Member John Laird, who unfortunately could not be here today because he has a sub budget hearing in Fresno, hoping he could be here as Bruce's Assemblyman, but he's got pressing business in Fresno and I appreciate that.

CHAIRMAN PERATA: I bet he'd rather be here.

SENATOR MALDONADO: I'll bet you, too.

So with that, it is a great honor for me to be here to introduce to you Governor Schwarzenegger's nominee to serve as Secretary of State, my friend, our friend, State Senator Bruce McPherson. Bruce is my constituent. He is my predecessor, my colleague, but most important, he's our friend. He's my friend.

And as of yesterday, I must tell you that he had left a bag, and he called me. And he asked me if I'd go pick it up for him. So, as of yesterday, I am his bag man.

[Laughter.]

1 SENATOR MALDONADO: But as we were sitting in the
2 audience, I said, "How does it feel? You don't have a bill here
3 today. It's you."

4 He says, "It feels great, and it's an honor to be
5 here."

6 I would say that, Mr. Chair, in my district,
7 people always come up to me and say, "Senator McPherson left
8 some big shoes to fill." I say, Senator Bruce McPherson left a
9 great example for me to follow.

10 Bruce McPherson has the experience, as the
11 Assembly Election Chairman, and a record of leading our state on
12 modernizing and improving and reforming our election law and
13 process. My constituents, his constituents, respect him as an
14 honest, dedicated public servant who always listened to them,
15 and at the end of the day, always voted his district.

16 As a colleague, I always appreciated Bruce
17 because he was personable, bipartisan, but most important,
18 always professional.

19 Mr. Chairman and colleagues, I look forward to
20 casting my vote to confirm Bruce McPherson as our Secretary of
21 State at the earliest possible moment. I urge this Committee to
22 unanimously recommend Bruce to the full Senate today, and I urge
23 my former colleagues on the green carpet in the Assembly to take
24 note of our swift action and to please support Bruce McPherson
25 in this important job.

26 Thank you, Mr. Chair.

27 CHAIRMAN PERATA: Thank you, Senator.

28 SENATOR DENHAM: I'm here more so not as a State

1 Senator but as a friend.

2 CHAIRMAN PERATA: For the record, who are you?

3 [Laughter.]

4 SENATOR DENHAM: State Senator Jeff Denham.

5 CHAIRMAN PERATA: You worked hard to get that
6 title.

7 SENATOR DENHAM: Absolutely.

8 Bruce and I go way back. He's been an
9 inspiration to me long before I ran for office. He's been
10 thoughtful; he's been classy, and been very effective as both an
11 Assemblyman and a Senator for our community.

12 I believe that he's the textbook example of what
13 a citizen legislator should be, somebody who's not focused on
14 political gain or partisan politics, but focused on what is the
15 right thing to do for the people of his district and the people
16 of this state.

17 You know, I think that he's shown us that while
18 we may disagree on issues, we don't have to be disagreeable.
19 And his friendship to all of us, I think that it's something
20 that goes more than a long way.

21 As I reflected back on some of Bruce's and I, our
22 early talks, even before I was looking to run for office, I
23 just remember thinking about what it meant to me when we first
24 started talking about a lot of different issues, and why he was
25 an inspiration. To me, he was an inspiration because he was
26 somebody that could pull ag and labor together. He could pull
27 teachers and school boards together, business and the
28 environment, labor and management. He's somebody that's

1 collaborative in pulling people together and coming up with
2 positive solutions.

3 So, I wanted to be here as a friend today, and I
4 leave you with one parting thought, and I'd ask you not to hold
5 this against him, but Bruce is the reason that I ran for office.

6 [Laughter.]

7 CHAIRMAN PERATA: That's helpful. Thank you,
8 Senator.

9 Senator, let me just tell you how it works here.
10 You're doing really well until Richard Costigan comes in the
11 room, and that usually means he thinks you're in trouble. So,
12 I'll kind of wave to you if he shows up.

13 SENATOR MCPHERSON: Okay, right.

14 CHAIRMAN PERATA: Please proceed, sir.

15 SENATOR MCPHERSON: Thank you President Pro Tem
16 Perata and Members of the Committee. Thank you for this
17 opportunity to come before you today.

18 For the record, my name is Bruce McPherson. I'm
19 the Governor's nominee to serve as Secretary of State.

20 I am honored the Governor has provided me with
21 this opportunity to continue to serve the people of California.
22 I have lived in California all my life. I'm a fourth generation
23 Santa Cruz native. My family roots date back before statehood.
24 My great-grandfather, Duncan McPherson, initially sought his
25 fortunes in the gold fields of Placer County when California was
26 the Bear Flag Republic. He eventually settled in Santa Cruz,
27 where he purchased for a half interest in the Santa Cruz
28 Sentinel, the local newspaper, for \$900 in 1864. Thus began the

1 118-year family ownership of our family's generational
2 commitment to our local community.

3 I was the newspaper editor of Santa Cruz Sentinel
4 for 26 years, a member of the fourth estate who felt strongly
5 that greater civic participation is the bedrock of a healthy
6 democracy. And actually, I was editor for ten years, not 26.

7 Democracy is not the easiest system of
8 government. In fact, it is the most difficult because it
9 demands so much of its people, who are the source of its power
10 and legitimacy.

11 My newspaper publisher father, Fred McPherson,
12 Junior, who ran for the Assembly in 1932 and lost by 400 votes,
13 told me, as his father told him, that we are very fortunate to
14 be in the position that we're in, but that in itself was not
15 good enough. We must participate in our community, and we must
16 give back. We must make it better than we found it.

17 I have been fortunate enough to serve for the
18 community of California for 11 years in the Legislature, and now
19 I hope to continue to do so as Secretary of State. These are
20 not the circumstances I would have chosen to continue that
21 service. Nonetheless, I feel the weight of obligation before me
22 and the sense of urgency that we all face in trying to restore
23 public confidence in the ability of the Secretary of State's
24 Office to fulfill its obligations to administer federal and
25 state election laws and support our front line county elections
26 officials to ensure our precious, fundamental right to vote.

27 As a State Legislator, I worked in a collegial,
28 nonpartisan, open and honest manner. I served my constituency.

1 I voted independently, and I voted my conscience. I had the
2 pleasure of serving as Chairman of the Assembly Elections
3 Committee. I authored bills to make the Secretary of State a
4 nonpartisan elected official, and to require electronic filing
5 and internet disclosure of campaign finance statements so the
6 public had access to this vital information. I co-authored
7 legislation to provide voters with a written record of their
8 ballot, known as a paper trail, to ensure confidence in our
9 election process. And I jointly authored with the Pro Tem's
10 predecessor the landmark measure to provide public access and
11 openness to state government in Proposition 59, which California
12 voters approved overwhelmingly last November.

13 That same person who served with you as a fellow
14 Legislator is the same person who will assume the office of
15 Secretary of State if I am confirmed. My door will be open not
16 only to county elections officials, but also to the Legislature
17 and the general public. In my first campaign for Assembly in
18 1933 [sic], my creed was for people, not politics. I meant it
19 then, and I mean it now.

20 These are complex and multifaceted issues facing
21 the Secretary of State's Office. As you are aware, the Office
22 has six divisions. Of those six, the division that requires the
23 most immediate attention is the Elections Division. The
24 Elections Division is critical because the Secretary of State is
25 the chief elections officer of the state ultimately responsible
26 for the conduct of its election process. And no voting system
27 can be used for any election in the state without the approval
28 and certification of the Secretary of State.

1 The Secretary provides advice and guidance to
2 local elections officials and, with the help of the Help America
3 Vote Act, or HAVA, provides resources to fulfill federal
4 mandates. With those resources comes the responsibility to
5 provide a vision for implementing federal mandates consistent
6 with the needs and desires of California, to make decisions
7 about priorities, and then to be accountable to the Federal
8 Election Assistance Commission for meeting federal mandates.

9 California is fortunate. We pioneered many of
10 the best practices before they became federal law, like
11 provisional voting requirements, sample ballots, ballot
12 pamphlets, election day notices.

13 Our biggest challenges now include: fulfilling
14 voting system mandates so that we deliver more accurate and more
15 accessible equipment for voters, those with special needs or
16 language barriers in particular, and to help counties and poll
17 workers with that critical transition so that new equipment does
18 not inhibit the smooth conduct of the election.

19 New federal mandates require voters to be able to
20 catch mistakes they make on the ballot and to get a new ballot,
21 and to make sure that visually impaired and disabled voters can
22 vote independently and secretly. New state mandates require
23 voter-verified receipt for ballots.

24 We must harmonize those requirements. It is a
25 technological challenge we must meet. We must create a
26 statewide voter base -- voter database that will serve as the
27 official record of who is eligible to vote.

28 The state's track record with large technology

1 projects has not been spotless, but the state and the Secretary
2 of State may have several advantages. The Secretary of State's
3 Office created an electronic election night reporting system and
4 an electronic reporting system for lobbyists and campaigns.
5 Those systems are in place now. We have a statewide voter
6 registration database that dovetails in some respects with local
7 systems. And we have local voter registration database systems
8 that are fairly sophisticated and large. Los Angeles County's
9 system includes about a quarter of the state's voters, 4 million
10 voters, which is larger than some states. Other states, such as
11 Michigan and Kentucky, have met this challenge and we can draw
12 upon those experiences. Again, it is a technology-based
13 challenge that we must meet.

14 We must have a voter outreach and education
15 programs that are nonpartisan, open, transparent, and focused on
16 outcomes. This should include poll worker training. The pool
17 of poll workers, who are the backbone of delivering an election,
18 is dwindling. We need heavy recruitment and strong training to
19 make sure that our election processes serve our voters well.
20 And we need to boost voter registration and voter turnout.

21 County election officials were pleased with a 75
22 percent turnout during the last election, but we can do better.
23 There are 16 million registered voters in California, but there
24 are an estimated 22 million Californians who could be
25 registered. Again, the programs to increase registration and
26 turnout must be above reproach, designed and implemented as
27 nonpartisan efforts that reach out to every potential voter.
28 That takes clear program design and vigilant attention to

1 implement. It takes a commitment to a strong partnership with
2 our county election officials and community-based organizations
3 who know best the needs of their voters and their
4 constituencies.

5 These are challenges that California has
6 experience with and a head start on, but they are priorities.
7 My first task will be to assess our progress with the Secretary
8 of State personnel, use the unique talent on my transition team
9 that I've developed, and collaborate with county election
10 officials by reaching out as far and as wide as possible to
11 consult all those with knowledge, experience and good ideas.

12 You have raised some questions about my position
13 on provisional voting and voter identification. I would like to
14 address those issues briefly with the Committee.

15 I fully support the goals of provisional voting,
16 extending the franchise to every voter legally entitled to vote.
17 The administration of provisional voting rules can be complex
18 and a burden to the smooth conduct of elections. That has
19 caused me some concern as a policy maker in the Legislature.
20 But as an administrator of election law, let me assure you that
21 I fully appreciate the obligation I undertake to uphold all the
22 laws of California and give them full force and effect.

23 Likewise, voter identification for me has
24 represented a commitment to the integrity of the election
25 process. In fact, some voters have an expectation to show
26 identification at the polls, especially when it is a routine
27 part of some mundane transactions, including renting a video or
28 gaining access to an airplane.

1 The purpose of the law should never be to
2 disenfranchise voters, but to establish the residency of the
3 voter and strengthen the franchise itself.

4 While the Elections Division and elections issues
5 have tended to dominate the public's attention, there are other
6 divisions within the Secretary of State's Office, all of which
7 face challenges that must be assessed thoroughly, including: the
8 Political Reform Division, which serves the critical function of
9 making campaign and lobbyist disclosure statements accessible to
10 the public. I am committed to those goals of full disclosure,
11 easy access, and easy use.

12 The Business Program Division, which provides the
13 avenue to fulfill legal requirements for establishing,
14 dissolving and merging corporations, partnerships, and limited
15 liability corporations and partnerships. More than 1,000
16 filings are submitted each year in this state. The Division
17 serves the critical function of public disclosure of corporate
18 information. The project to automate the process for filing and
19 for public access begun under a previous administration must be
20 completed.

21 The Archives Museum, which there was a story
22 about, I believe, in today's newspaper, the Secretary of State
23 is the custodian of documents of historical significance.
24 Making sure that we preserve our history for our children and
25 our grandchildren is our duty. The State Museum is also part of
26 that effort. It should be a complement to the Archives
27 function.

28 I know the Museum is something that the Speaker

1 and the First Lady have taken a great interest in, and like
2 them, I am committed to making the Museum a resource and an
3 attraction for adults and children alike.

4 Information Technology. Information technology
5 will continue to be a focus of the Secretary of State's Office
6 under my administration if I am confirmed. Technology is
7 important to the Elections Division with election night
8 reporting, computerized voting, and the need for statewide voter
9 registration database.

10 To the Political Reform Division, with electronic
11 filing and internet access for campaign and lobbyist
12 disclosures, to the Business Programs Division with electronic
13 filing of business filings, and even to the Archives to ensure
14 public access to archived materials and electronic documents.

15 The Management Services, although this unit
16 performs the back-office function, so to speak, of the Secretary
17 of State's Office -- personnel, budgeting and contracting -- it
18 is critical in light of the State Auditor's finding to restore
19 public confidence in this office. It will be a focal point for
20 improving employee morale, ensuring the legitimacy of spending
21 public funds, and contracting for services. Strong leadership,
22 accountability, and transparency all need to be at the
23 foundation of this unit's operating principles.

24 Also housed within this unit are two programs of
25 particular note. The Safe at Home Law, authored by former Dede
26 Alpert, who is also a member of my transition team. This is a
27 confidential address program for victims of stalking and
28 domestic abuse. The program allows those who qualify to use the

1 Secretary of State as their so-called home address so they can
2 not be tracked by their abuser.

3 Domestic Partners Registry. This is a program I
4 will continue to administer in full compliance with the law. I
5 have met with the Lesbian, Gay, Bisexual, and Transgender Caucus
6 and heard members' concern about certificates being issued in a
7 more timely fashion, and I will work to do so.

8 Before reviewing my approach to revitalizing the
9 Secretary of State's Office and the election process in
10 California to meet the looming federal deadlines, I would like
11 to review for a few moments some of the basic points related to
12 initiatives and special elections.

13 I have spoken to many of California's county
14 election officials in my transition team so that I could give
15 you a clear and direct explanation of the special election and
16 initiative processes.

17 While the Secretary of State is the chief
18 elections officer in California, his or her role in a special
19 election or in the signature verification of initiatives is
20 ministerial, not discretionary. It is up to the Governor to
21 call a special election if he so chooses, but he cannot do so
22 according to the State Constitution or election laws unless an
23 initiative has qualified to be placed on the ballot at least 148
24 days before the date chosen for that special election. If other
25 initiatives qualify, they may also appear on the special
26 election ballot as long as they are qualified within 131 days of
27 a special election.

28 Qualifying an initiative requires, according to

1 our laws, that proponents of an initiative submit voter
2 signatures to the county election officials. County election
3 officials have up to eight working days to do a raw count to
4 determine the total number of signatures. If the number is 100
5 percent of that required to qualify the measure, then the
6 Secretary of State directs the county election offices to
7 conduct a random sample verification of those signatures. They
8 can take no more than 30 days, working days, to complete this
9 random sample check.

10 The results are then reported to the Secretary of
11 State, who compiles the total number and determines if there are
12 enough valid signatures to qualify the initiative for the
13 ballot.

14 This process is mechanical. The deadlines are
15 definitive. The law is clear, and I cannot change the law. The
16 signature collection and verification process is laid out in the
17 law. The only variation is that the Legislature may place
18 measures on the ballot after the 131-day deadline by passing a
19 law changing that deadline. My job as Secretary of State will
20 be to ensure the orderly, open, and efficient administration of
21 this mechanical process.

22 I want to make it clear now how I will handle the
23 pressing and critical problems facing the Secretary of state's
24 Office.

25 I intend to hit the ground running. My first
26 task will be to immediately assess the status of the critical
27 functions inside of the Secretary of State's Office. My
28 transition team and others will help me undertake this vital

1 initial review.

2 I also will be meeting with the Department of
3 Finance to determine the full amount of funds available to the
4 election officials of California. I will be conducting a
5 simultaneous internal audit of HAVA's implementation and make
6 sure of what the changes are and that we comply with them.

7 I will be in communication immediately following
8 my confirmation, if that should happen, with the Federal
9 Election Assistance Commission in Washington, D.C., to try to
10 make up for the precious time lost in meeting the federal
11 deadlines of January 2006.

12 I will review the HAVA state plan to see where it
13 needs to be fixed, set back on track, including its
14 completeness, the deadlines for having approved voting systems
15 in place, and a statewide voter registration database, as well
16 as plans for voter education and outreach, and poll worker
17 training.

18 I will work with the county election officials to
19 tap every resource I can to construct an open, transparent, and
20 efficient process that is accountable to you and to the people
21 of California. In that spirit, I believe an annual State of
22 California Elections Report from the Secretary of State will
23 help inform voters and maintain confidence in the administration
24 of elections.

25 I have sat in this room on many occasions and
26 listened to a great deal of testimony on big and small issues
27 that have confronted California. I find it a bit humbling and
28 yet a great honor to be sitting on the other side of this dais

1 today, presenting to you my qualifications and desire to
2 continue my public service if confirmed as Secretary of State.

3 California needs a Secretary of State. I have
4 consulted with local election officials, and the risk of
5 California losing millions of dollars and being out of
6 compliance with federal law is very real.

7 I pledge to you to bring trust, confidence, and
8 efficiency to the office of Secretary of State. I am ready,
9 willing, and able to do the job, and I ask for your vote to help
10 me get there. Thank you very much.

11 CHAIRMAN PERATA: Thank you, Senator.

12 Before we open up for questions, just a couple of
13 preliminary comments.

14 Even though there are many different functions
15 within the office, probably none is greater than securing the
16 conduct of the franchise.

17 In this state, we have moved slowly but
18 progressively towards greater and greater voter convenience --
19 thank you both for being here -- and your predecessor received
20 high marks for the conduct of the special election, the Recall
21 Election that we had. And in part, I believe that was a
22 function of having some very clear benchmarks that he set
23 forward that you were discussing earlier about what the law
24 requires, what the latitude is, making it very clear to
25 everybody how those would be met and understanding the
26 relationship between what the counties do and your office.

27 I had the distinction of chairing the E and R
28 Committee, as you know, in the Senate during the redistricting,

1 for which I received much credit by the Governor and others
2 lately. And one of the things that we have done and have
3 encouraged is to make easier not only voter registration, but to
4 identify and promote ways that the very mobile California voter
5 can have his or her interest best served.

6 One is, how long a person has before registration
7 closes.

8 The second is using all the available technology,
9 which will bring us into the whole question of e-mail
10 registration.

11 Those will be issues that we will follow closely
12 in our house in that committee. I don't speak for the Chair,
13 but those are the things that we believe are very important.
14 The commitment is to serve the interests of the voter, and of
15 course, correctly tabulating those votes when they're cast.

16 So, just as a general overview that's an area
17 where we really would like to help you, and encourage you to
18 focus. Where you don't have administrative authority to act, we
19 would like to give you statutory authority.

20 And I would just welcome at any time
21 conversations with you, with your office, with the Chair of our
22 committee. And I'm sure that across the way, Assemblyman Umberg
23 and Speaker Nunez would feel in a comparable way.

24 I also wanted to congratulate and thank publicly
25 Kathy Mitchell for the work that she's done during the interim.
26 It's been a very difficult time, and she's acquitted herself
27 wonderfully. I want to thank her for all the work that she
28 did.

1 With that, I'll open it up for questions.
2 Senator Bowen.

3 SENATOR BOWEN: Thank you.

4 Well, let me first start acknowledging that the
5 situation's a little awkward.

6 SENATOR McPHERSON: I know. That's all right.

7 SENATOR BOWEN: For both of us, since I have more
8 than a passing interest in this position.

9 In fact, when news of the vacancy in the office
10 came out, you were the first person I thought of as being the
11 second-best person to do the job.

12 [Laughter.]

13 SENATOR BOWEN: So, I guess my first question
14 would be if you're confirmed, whether you've given any thought
15 to joining the Bowen for Secretary of State.

16 [Laughter.]

17 SENATOR McPHERSON: I'll have to think about
18 that.

19 SENATOR BOWEN: I actually do have a few serious
20 questions.

21 First, you know the Legislature passed
22 unanimously and the Governor signed the bill to require the
23 voter verified paper audit trail by January 1, 2006, and that
24 certainly will be a great challenge for California.

25 There are some folks who would like to eliminate
26 that requirement or see it delayed.

27 What are your thoughts, and what do you think
28 will or should happen with counties who don't feel they can meet

1 that requirement?

2 SENATOR MCPHERSON: We have to meet -- we have to
3 move toward meeting that requirement, and that's the bottom
4 line. It's the law of the state.

5 And to answer your first question, I do believe
6 firmly and co-authored that so-called Johnson bill, Senator Ross
7 Johnson's bill, to have a verified paper trail.

8 I think it's absolutely necessary to maintain the
9 confidence in our election system that we have a paper trail in
10 our balloting measures.

11 It is something that's going to be difficult to
12 attain entirely by January 1st, but I feel confident we can move
13 a step ahead and not take two steps back to get us in place by
14 2006, of January 1st. And certainly by the June election, the
15 Primary Election in 2006, to have an acceptable paper trail
16 system and voter base that will be accepted by the federal
17 government and will meet the demands of what is in state law in
18 California.

19 SENATOR BOWEN: In your response to the
20 Committee's questions, Question 8, you talk about supporting an
21 on-line voter registration effort.

22 Could you just talk a little more about that? I
23 know it won't be the first priority, given the equipment issues.

24 SENATOR MCPHERSON: Right.

25 This is something that we have to work on to make
26 sure that the -- and I need to talk with the -- and this will be
27 an answer that I'll have it as I give to anything on elections.

28 First of all, I want to make sure that I am going

1 to be working with the elections officials throughout the State
2 of California to implement these new and very serious programs
3 in the quickest way possible, and I will need their input to do
4 it.

5 I think that we can have -- have that function in
6 place by the June election, again. And I think we can work
7 toward that end as quickly as possible. But I have to be there
8 to assess just how quickly we can do it, and some counties may
9 be ahead -- are ahead of others.

10 I do want to say that I have not set foot in the
11 Secretary of State's Office. I think it would be presumptuous
12 for me to do so. That's why I'm anxious to get this
13 confirmation process completed as quickly as possible so we can
14 deal with the problems ahead.

15 SENATOR BOWEN: Let's talk a little bit about
16 absentee voting. I know in the past that you've opposed efforts
17 to allow voters to register as permanent absentee voters, but
18 clearly it's a system that people like. In the Congressional
19 race that was just held here, 54 percent of the voters voted by
20 absentee ballot.

21 Can you explain your reluctance towards granting
22 people the right to become permanent absentees?

23 SENATOR McPHERSON: No. As a matter of fact, my
24 wife, who is here, is a permanent absentee voter. And so, I
25 believe it in my household.

26 I think the fact of the matter is, I have
27 supported permanent absentee voter legislation in the past. It
28 is certainly a part of the process that we have now, and a great

1 number of people, as you have said, have done it.

2 If I have opposed those measures for one reason
3 or another, I can't tell you. We have 3,000 bills a year, as
4 you know, to vote on, on average. I don't know exactly what
5 bill at what time, or where it was at what time that I may have
6 voted No on that.

7 But by and large, I have supported permanent
8 absentee ballot voting. And I think it is well accepted, and I
9 think it is accurate, and we can count on it, and I do support
10 it.

11 SENATOR BOWEN: Let's follow on that with a
12 little further discussion of the all-mail balloting. This is
13 Question 8, I think. No, it's question 12.

14 The question asks what your philosophy is
15 regarding the use of all-mail or absentee ballots. And again,
16 given the No votes that you cast on the expansion of all-mail
17 ballots, your answer talks a little bit about the local-only and
18 limited elections, but doesn't really discuss what your
19 philosophy is on the all-mail election.

20 SENATOR McPHERSON: On all-mail election
21 balloting, I sponsored legislation that ultimately came into law
22 and specified that it be in a particular county within my
23 district, Monterey County, as it turned out. That would be in
24 the nongubernatorial, nonpresidential elections, where often
25 turnout is so low and the cost is so high for the election
26 officials in that county that they came to me and asked me,
27 "Could we have -- would you consider sponsoring an all-mail
28 ballot proposal?"

1 I accepted that, being convinced that in that
2 county in particular that I was dealing with, that the so-called
3 deadwood was off the rolls, that it was a true roll, and that we
4 could perform elections in a more economic fashion and get a
5 higher turnout with an all-mail ballot. That has proven to be
6 the case.

7 I would be open to expanding that, but I would
8 want to make sure, again, and go back to local county election
9 officials, that they have the proper voter file in place, and
10 that I can be convinced that this would be the proper way to do
11 it, to encourage more voters to vote.

12 SENATOR BOWEN: Let's go to the next question you
13 were asked, which was Number 13. This is a question that
14 stemmed from the Hertzberg bill that shortened the time to
15 register from 29 days to 15.

16 That concern that you expressed, that in 15 days
17 people may not be able to receive a voter pamphlet or a sample
18 ballot, or otherwise educate themselves, and yet your answer to
19 whether or not we should go to same-day registration says that
20 HAVA may provide California with the opportunity to do that.

21 I just have trouble reconciling the concern about
22 people having enough time with moving towards same-day
23 registration.

24 SENATOR McPHERSON: I'm concerned about same-day
25 registration because in my conversations, again, with local
26 election officials, it could create a nightmare. And we have to
27 maintain the integrity of the electoral process or people will
28 lose confidence in it.

1 There may be a time that we can get to that
2 point, but I don't think we're there at this date. I could give
3 you -- well, when it was reduced from 29 to 15 days, there was a
4 great deal of concern from local elected officials if we could
5 meet the standards and keep those high standards of the
6 electoral process that we have in California.

7 We are there now. It seems we can accept that,
8 but I do not think that we are in a position to go to same-day
9 registration. It can cause confusion because it can result in a
10 number of voters going to various election polls and casting a
11 ballot when they're not in the right place for them to vote on
12 their local city, or school board, or whatever it may be.

13 It would take an educational process to figure
14 that out. And it would take a big education process for our
15 poll workers, so if somebody came in, and they identified where
16 they were living, that in fact they could steer them to the
17 place where they would cast their ballot, and every vote in
18 every election, whether it be in the school board or a city
19 council, or for President of the United States, or Governor of
20 California, would be in fact counted.

21 So, I don't think we're there yet, but I would be
22 glad to -- I'm open to working toward that end.

23 SENATOR BOWEN: I guess I'm really going
24 specifically towards your statement that same-day voter
25 registration creates the same problem as AB 1094 did, which is
26 voters have to decide complex issues on the spot by looking at a
27 guide in the sample ballot.

28 If that's the problem then it doesn't matter what

1 the technology is. The problem's going to stay the same.

2 SENATOR MCPHERSON: Well, that's something that
3 I'd need convincing. I don't know that I'd support it. I'd be
4 open to it. I think we ought to be open to it.

5 I'd have to be convinced with the staff of people
6 who are in the Secretary of State's Office through this turmoil
7 they've experienced, who are the most professional and dedicated
8 people you'll ever want to meet.

9 SENATOR BOWEN: Could you talk a little bit about
10 your thoughts about increasing voter turnout, especially among
11 underrepresented groups? What are your thoughts about how you
12 would go about doing that.

13 SENATOR MCPHERSON: I think this is --

14 SENATOR BOWEN: The hardest question anyone can
15 ever ask.

16 SENATOR MCPHERSON: Yes, and it's going to be
17 pretty basic. I think it's an educational process. We have a
18 great number of new persons coming into the state every year,
19 more than half a million, probably 600,000 a year. And to reach
20 them it's going to take very much a coordinated effort between
21 the Secretary of State's Office, but most pointedly, for those
22 community organizations, such as the League of Women Voters, and
23 certainly the election officials in each county, to get an
24 education program so we can let people know what is the process
25 as soon as possible, and let them understand it, and what their
26 responsibilities are if they are a citizen of California and the
27 United States.

28 SENATOR BOWEN: One final question, and this is a

1 question that's been presented to me by a couple of different
2 groups who are interested in what happens in the Secretary of
3 State's Office now.

4 The suggestion has been made that all of the
5 current members of the Voting Systems and Procedures Panel
6 should be retained because they've developed an expertise.
7 They're all seasoned and expert public servants, and that it
8 would be disruptive to change the make-up of that panel at this
9 point.

10 May I have your views on that?

11 SENATOR MCPHERSON: This is another one where I'm
12 going to assess, plan, and execute.

13 I do not think that panel has had the attention
14 that it deserves in the past. I don't know that -- I'm not sure
15 what the membership should be, if there are vacancies on it.

16 I think there is a great deal of value for
17 keeping those who are there on the panel, and I would be much
18 more open to hearing what they had to say, I think, than the
19 previous administration did or Secretary did.

20 SENATOR BOWEN: All right, thank you.

21 CHAIRMAN PERATA: Senator Cedillo.

22 SENATOR CEDILLO: Congratulations to this point.
23 We're going incrementally here.

24 You and I had the pleasure of meeting yesterday,
25 and I appreciate that. I appreciate you coming by.

26 We've worked together on many issues and bills,
27 and I'm very happy for you and your family.

28 I do have, though, a couple of questions that

1 were brought forward in the questionnaire, and then part of the
2 discussion you and I had.

3 Let's start with, I have some concern on the
4 question of an identification for voting. The franchise is
5 unfettered. All Americans have this franchise.

6 In our state, you turn 18, it becomes a right.
7 It's unencumbered.

8 So, I'm interested in your thoughts on this
9 question of an I.D. to exercise that, given that the franchise
10 belongs to the individual not the state. So, your comments on
11 that?

12 SENATOR McPHERSON: Right.

13 I believe that --

14 SENATOR CEDILLO: I'll tell you my concern. We
15 need a balance, and I do not want the concern for certainty,
16 integrity of the process, to overwhelm really the exercise of the
17 franchise, particularly in underrepresented communities.

18 SENATOR McPHERSON: Right.

19 The integrity of our process is critical to the
20 stability of our democratic system of government. There's no
21 question about that.

22 And I think that most California voters would
23 actually be surprised to learn that identification isn't
24 requested or demanded, is not exactly.

25 I think that we will work to make sure, and I
26 will never accept any measures that infringe on the voting
27 rights of those eligible and entitled to vote. That is the one
28 thing that's a basic premise of my answer to that question.

1 And we want to maintain the integrity of it, of
2 the system, but we want to make sure that the voting rights of
3 everybody -- of nobody is infringed. And I will stick to that
4 and dedicate my efforts to do that as Secretary of State.

5 SENATOR CEDILLO: Thank you.

6 The second is, we had an opportunity to talk
7 about some strategies to get the young people involved -- people
8 coming out of high school, people in universities, college
9 campuses -- how to get more engagements from our state,
10 particularly from our young voters in communities that don't
11 participate as much.

12 But particularly I have, as shared with you
13 yesterday, an interest in how we get young people committed,
14 engaged in this process.

15 SENATOR McPHERSON: There have been some
16 suggestions to get registration on our campuses, on our high
17 school campuses as well as our college campuses.

18 In prior efforts, that has been questioned, shall
19 I say, by some local election officials as well as the
20 educational institutions that were involved.

21 I would -- this is one that would like to review
22 and see how can we make this work and be acceptable, because I
23 think it could have some positive impact on registering more of
24 our young people, especially that 18 to 24 or 26 group of
25 individuals. We'll be open to that, and would like to open the
26 discussion with county election officials as well as education
27 interests and see how can we do this so we can get more people
28 on the rolls.

1 I think that is worth exploring, and I would be
2 glad to do so and work with you on that, if you would like to do
3 so.

4 CHAIRMAN PERATA: Questions from the opposition?
5 Senator Battin.

6 SENATOR BATTIN: I move the confirmation of
7 Senator McPherson as Secretary of State.

8 CHAIRMAN PERATA: Senator, did you have anything
9 wanted to ask about water in Kern County.

10 SENATOR ASHBURN: I've been trying to figure out
11 what our colleagues in the Assembly are doing.

12 [Laughter.]

13 SENATOR ASHBURN: I know that's always an
14 interesting question.

15 Because, as I understood the schedule, that
16 Senator McPherson would have his hearings today before the Rules
17 Committee of the Senate and the Assembly, and that the Assembly
18 and the Senate would be able to vote on your confirmation
19 tomorrow, prior to the Spring Recess.

20 As I understand it now, that will not be able to
21 be accomplished. And I'm distressed by that because I think
22 it's imperative that you get to work as quickly as possible, and
23 that the Legislature render its decision with respect to your
24 appointment as quickly as possible.

25 I don't expect you to answer that, but I think
26 it's pretty clear now that you're going to have a hearing at
27 Assembly Rules tomorrow, and there will not be a vote in the
28 Assembly.

1 SENATOR MCPHERSON: That's what I -- I just
2 received the notice this afternoon from Assemblywoman Montanez
3 that, upon adjournment, the Rules Committee will want me to
4 present before them tomorrow after they have, most of them, gone
5 home.

6 That is unfortunate. Time is of the essence
7 here. We're going to lose two weeks, and we've got a deadline
8 of January 1st, and every day counts. And if nobody believes
9 that, they should talk to their county election official.

10 It's just the way it is. That's the timing of
11 it. I was hopeful we could get to it this week because I think
12 maybe with all of you gone next week, and me here at the
13 Secretary of State's Office, I could probably get a lot done.

14 [Laughter.]

15 SENATOR ASHBURN: And I think that reflects on
16 the way in which you conducted yourself in the Legislature and
17 in our personal relationship, that diplomatic way of saying what
18 I would have said differently.

19 [Laughter.]

20 CHAIRMAN PERATA: That's for sure.

21 SENATOR ASHBURN: I want to ask a couple of more
22 general questions about the urgency -- and it ties again to my
23 distress over what I've just learned about the schedule
24 change -- that is the way in which you intend to proceed,
25 assuming that you are going to be confirmed and take the oath of
26 office as Secretary of State.

27 What steps are you going to take first? How are
28 you going to do that? And what is it that you have in mind to

1 convey to the people of California, because there's a cloud over
2 the office that you're about to assume?

3 SENATOR McPHERSON: Right.

4 There are several things that are top on the
5 board. One is, to get back to the Federal Elections Commission,
6 they want to talk to somebody who is the Secretary of State to
7 be assured that there is stability in your system, and that you
8 are working on it and going forward. And the things in
9 particular that we would be going forward, or we need to move
10 forward on, are the voting systems themselves. We have a paper
11 trail requirement that begins January 1st, and we have to work
12 and advance as quickly as we can to get there.

13 I don't feel that it's proper -- I have my
14 ideas -- to make these moves before I am confirmed. I just
15 don't think I should, and I will not do that.

16 But I would love to start it tomorrow or Friday.
17 But this is where we are.

18 The HAVA funding issue is critical because that
19 is going to give us much of the funding that we need to
20 implement the laws of the federal government and the State of
21 California. And until we have a renewed confidence that the
22 Secretary of State's Office is on the right track, we're not
23 going to be able to implement those at the local level.

24 So, getting the voting systems, per se, there to
25 meet the requirements that we have placed in the state, as well
26 as what the federal government has put through the Help America
27 Vote Act, are going to be delayed now for two weeks, as far as
28 I'm concerned.

1 We also need to develop at statewide voter
2 registration base and get that in place as quickly as we can.
3 That is going to be an immediate because it's also a demand for
4 January 1st, 2006. I'm not sure that we can get the full
5 complement of what is demanded of us by January 1st, but I do
6 know that we can move ahead in a manner that I think we can be
7 accepted, so to speak, by the federal government and meet the
8 state criteria that is before us or upon us, and get there as
9 quickly as possible.

10 So, I think the voting systems, the statewide
11 voter registration database, and the whole HAVA, Help America
12 Vote Act, funding issue are the most critical ones that we have
13 to address so we can get our voting system up and ready to meet
14 the standards that are upon us.

15 SENATOR ASHBURN: To what extent do you rely upon
16 the Legislature to do its work with respect to a review of the
17 HAVA funds in what occurred in the past? Because I believe it's
18 becoming clear that there's going to be a white-wash and a
19 cover-up of the investigation of what took place in the past by
20 the Legislature through the Joint Legislative Audit Committee.

21 So, to what extent are you going to be able to
22 conduct your own investigation? And to what extent are you
23 committed to that and let the facts come out as they are?

24 SENATOR MCPHERSON: There are ongoing
25 investigations as we speak, aside from the JLAC hearings, and I
26 think there's just one of those left, it's my understanding.

27 But in fact the HAVA funding comes through the
28 administration, and particularly the Finance Department.

1 I would welcome or be open to hearing any
2 concerns that you have in the Legislature, but I do want to make
3 it clear that I see the Secretary of State's Office as separate
4 from the Legislature. And if there are concerns about the
5 voting process, or the business systems of the business programs
6 that we oversee, or the Museum, you bet, I will be here to
7 answer those questions and participate.

8 So, I would be more than open to working with you
9 if you have some particular concerns. We must realize that
10 there are ongoing investigations, and I will have to wait and
11 see what the results of some of those are.

12 And that's another time factor issue that is
13 unfortunate, but we're going to just have to deal with what is
14 handed to us when that time comes.

15 We want to just reverse it and get it on the
16 right track to assure people that the HAVA funds and the
17 administration of the Secretary of State's Office is up
18 above-board, and that we're moving in the right direction. If
19 we get that confidence, we're going to be able to make some fast
20 advances with the excellent staff that we have in the office.

21 SENATOR ASHBURN: Just one final comment. And
22 that is, you and your family have gone through an extraordinary
23 personal tragedy. And I believe that your son's murder, and the
24 way in which you and your wife and your family conducted
25 yourselves and have maintained yourselves reflects in a very
26 remarkable way on your personal strength and integrity. It is
27 an awful experience, one that none of us can possibly
28 contemplate.

1 But Bruce, the way that you have conducted
2 yourself, and the way in which you have handled yourself during
3 all of those terrible, terrible dark days is remarkable. And I
4 think it says that you are an extraordinary person of great
5 strength, inner strength. And I think those are the qualities
6 that we look for in people to lead at a time of crisis. This is
7 a crisis at the Office of Secretary of State.

8 And while I never announce my vote in advance, I
9 just think that you are a tremendous individual. And I thank
10 you for accepting the Governor's challenge to accept the post.

11 SENATOR MCPHERSON: Thank you.

12 I can say that nobody would be more excited than
13 I am.

14 CHAIRMAN PERATA: Even money he votes for you,
15 what do you think?

16 Frequently the Speaker of the Assembly asks for
17 the advice of the Senate. And since Senator Ashburn gave it,
18 I'd like to just explain a little bit of what's happened in the
19 Assembly. Actually, Senator Ashburn touched on it.

20 First of all, those of us in the Senate have
21 worked with you and have a high regard for your work, your
22 integrity, and all of us have enjoyed your collegiality. This
23 was a relatively easy thing for us to do.

24 By the same token, the Assembly is brand-new to
25 most of life.

26 [Laughter.]

27 SENATOR MCPHERSON: You said that; I didn't.

28 CHAIRMAN PERATA: And they very legitimately

1 wanted to perform their due diligence. We all wanted to grant
2 you a wide berth on recent events.

3 There was nothing untoward, there is nothing
4 insidious about the delay. The Speaker moved his caucus as fast
5 as they felt comfortable with moving.

6 And rather than having anything that would be
7 unnecessarily fractious, anything to take away from your
8 confirmation, the decision was made to wait these nine or ten
9 days because of the break.

10 I just want to assure you that everybody has been
11 very mindful of the timelines that you had, but we were also
12 under some timelines. You understand the legislative process.

13 I've told the Governor, as has the Speaker, that
14 we're doing this as fast as we can. We wanted to do it this
15 week as a signal to everybody how we feel about this
16 appointment, and its importance, and the importance of the
17 person that was nominated.

18 So, I think the Assembly is doing what they can
19 do. I'm sure they'll appreciate the comments that were made,
20 but they'll do the right thing at the right time.

21 With that, we normally don't have this many
22 people here, so I assume there are some of you here that want to
23 testify on behalf, or certify.

24 I would just ask you to come forward, to be
25 succinct, try to not say anything that's overly repetitive,
26 unless Bruce wants you to, and then you can have as long as you
27 want.

28 So, come forward.

1 MR. MARCH: Hello, Members of the Committee. My
2 name is Jim March. I'm speaking on my own behalf, but work with
3 two different groups who are involved in both self-defense
4 rights. And on that, in that capacity I spoke before Senator
5 McPherson at the Senate Public Safety Committee frequently. I
6 also monitor voting rights as a member of the Board of Directors
7 of Black Box Voting.

8 Given that dual role, it's my opinion that the
9 professionalism and commitment to public debate and dialogue
10 that Senator McPherson showed over in Senate Public Safety needs
11 to be brought over to the Secretary of State's Office.

12 Senator Ashburn touched on something that I think
13 is all the more remarkable, in that Senator McPherson was able
14 to moderate debates on firearms issues, on self-defense issues,
15 despite his personal background. And he did so with impeccable
16 fairness. He is one of the finest human beings I've spoken
17 before.

18 And I don't think that same level of
19 professionalism has been seen lately over at the Secretary of
20 State's Office, and I look much forward to seeing that
21 professionalism carried over to that office. I'd just like to
22 state that.

23 Thank you.

24 CHAIRMAN PERATA: Thank you.

25 Yes, sir.

26 MR. TURNER: Thank you very much for this
27 opportunity. My name is Paul Turner. I'm the Resident Fellow
28 at the Greenlining Institute, and also Director of our Claiming

1 Our Democracy Program. I'm also on the Board of California
2 Clean Money Campaign and California Common Cause.

3 At Greenlining Institute, we've been undergoing
4 government reform, and campaign finance reform as a civil rights
5 issue for the last four years and was instrumental in helping
6 pass the Bipartisan Campaign Reform Act of 2002 in Congress.

7 We believe that a just and democratic society
8 requires an informed and educated citizenry, participating fully
9 and equally in the democratic process. We believe that our next
10 Secretary of State here in California must be a genuine reformer
11 who will protect voting rights, seek fair elections, remain
12 impartial from party loyalties.

13 During the 2000 Florida Presidential Election, we
14 saw a huge spotlight being put on voting irregularities and
15 voter suppression in minority areas. Since that time,
16 Secretaries of State across the nation have been also under the
17 spotlight. Yet, during the 2004 Ohio Presidential Election,
18 there were six-hour waiting lines to vote in predominantly
19 minority districts, and a high number of provisional ballots
20 cast in those same districts.

21 It is imperative that California, a majority
22 minority state with 54 electoral votes, not become the next
23 Florida or Ohio during the next presidential election.

24 The Greenlining Institute and its coalition of 40
25 minority organizations believe that the protection of voting
26 rights should be of paramount concern for the next Secretary of
27 State.

28 In addition, we think that the next Secretary

1 should be open to campaign finance reforms that level the
2 playing field for minority participation in the political
3 process, and that this is just as important as guarding against
4 voting irregularities and ensuring access to the polls.

5 We also believe that the Secretary of State
6 should be open to a number of campaign finance and voter
7 empowerment issues, particularly public financing of elections
8 or clean money. This system has demonstrated to be a sound and
9 effective means for producing fair elections without big money
10 fund raising in Arizona and Maine. And as the chief campaign
11 finance officer in the state, the Secretary of State should be
12 ready, informed on the merits of a voluntary system of full
13 public financing of elections.

14 Number two, proportional representation.
15 California is not fully representative of the true political
16 leanings of its diverse population. We believe the Secretary of
17 State should take a hard look at multi-seat district elections
18 to boost voter turnout and increase representation.

19 Of course, we all know there's a current push
20 right now around redistricting. An independent redistricting
21 panel of retired judges may make California more competitive,
22 but unless the panel incorporates alternative voting systems and
23 proportional representation, these elections may not be
24 competitive. And we hope that the new Secretary of State will
25 be open to proportional representation and redistricting.

26 And then finally, we look forward to working with
27 the Secretary of State in implementing the spirit of the HAVA
28 Act, as well as looking to see how we can increase voter rolls

1 and registration.

2 And also, as an anecdote as I conclude, on the
3 ground poll worker training, I was in the polling place during
4 the election. I saw a young lady there, and I asked her, "Are
5 you old enough to vote?" She says, "No, I'm still in high
6 school." And I said, "Where are the rest of your classmates?"
7 She says, "Well, the teachers don't like to dismiss us because
8 our attendance is affected, and the pay is commensurate to
9 that." And I said, "What a wonderful idea."

10 We could just get the government classes in high
11 school to come and act as poll workers, and that way we train a
12 new generation of poll workers. We have a new generation more
13 adept to voting. And of course, we prepare the next generation
14 of poll workers. And I just offer that as an idea for you as
15 well, sir.

16 We look forward to, again, working with you and
17 having you come speak with me about minority constituencies
18 about protecting the vote, and making sure that every vote
19 counts.

20 Thank you very much.

21 CHAIRMAN PERATA: Thank you.

22 Anyone else like to come forward?

23 Anyone in opposition?

24 MS. HEALY: I am neutral.

25 CHAIRMAN PERATA: Good. We don't get many people
26 here who're neutral.

27 MS. HEALY: With issues, though.

28 I'm Sherry Healy from Democracy for America,

1 Marin County. And we've been getting very involved in the
2 election integrity issues.

3 And I've heard great things about Mr. McPherson.

4 Just taking notes during this meeting, I was just
5 noticing it seemed like there was a bit of a contradiction.

6 I did go to the JLAC committee meeting, audit
7 hearing of Shelley, and I was really intrigued that Mr. Chapman
8 at electionline dot org, which is a nonprofit, testified that
9 some states such as Georgia went out and spent all their HAVA
10 money right away. And then there's states like New York which
11 did not spend any money at all; they took a wait and see
12 attitude. And California was right in the middle.

13 There seems to be a rush to spend the HAVA money
14 before we have good options available.

15 But I think I'm not looking at my right page here
16 of my notes.

17 Well anyway, it seems like there was rush to
18 spend the money before we had a good option available.

19 And Mr. McPherson, I thought you said that --
20 suggested there might be a delay in implementing 2006 VVPAT
21 requirement to possibly June. And in the meantime, our
22 Governor's rushing a special election with an unprecedented
23 number of bills coming to ballot before we have election
24 integrity issues resolved.

25 So, I haven't really clarified my thoughts here,
26 but isn't there a contradiction between, you know, we may permit
27 voter integrity delay, but we might rush a special election?

28 This isn't all on you, of course. That's not

1 your thing.

2 And then rush -- well, also we might have to rush
3 to spend monies before we have a first-class option available
4 for our voting equipment.

5 So, I'm just throwing out these ideas. We had a
6 position statement, and Mr. McPherson pretty much covered that,
7 that he supported the VVPAT, and retaining the staff, and so on.
8 So, we're very pleased to hear those things.

9 But these other issues are just concerning, and
10 I'd like us all to think about it.

11 CHAIRMAN PERATA: Thank you.

12 Anyone here in opposition?

13 Seeing none, Senator, we have a motion. Would
14 you like to --

15 SENATOR MCPHERSON: No, I know how it goes. I'd
16 ask for your vote, please. Thank you.

17 CHAIRMAN PERATA: Secretary, please call the
18 roll.

19 SECRETARY WEBB: Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Bowen.

22 SENATOR BOWEN: Aye.

23 SECRETARY WEBB: Bowen Aye. Cedillo.

24 SENATOR CEDILLO: Aye.

25 SECRETARY WEBB: Cedillo Aye. Battin.

26 SENATOR BATTIN: Aye.

27 SECRETARY WEBB: Battin Aye. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.

2 CHAIRMAN PERATA: Congratulations.

3 SENATOR McPHERSON: Thank you.

4 CHAIRMAN PERATA: We'll take a five-minute break.

5 [Thereupon a brief recess was taken.]

6 CHAIRMAN PERATA: We'll reconvene the Senate
7 Rules Committee.

8 Our second gubernatorial confirmation today is
9 Kathleen Smalley, who's a member of the State Teachers'
10 Retirement Board.

11 Ms. Smalley, welcome.

12 MS. SMALLEY: Thank you.

13 CHAIRMAN PERATA: Any time you're ready.

14 MS. SMALLEY: My name is Kathleen Smalley.

15 I do have some opening comments, and I brought
16 copies for Members of the Committee, if I may, Mr. Chairman.

17 CHAIRMAN PERATA: Just give them to the sergeant.

18 MS. SMALLEY: Thank you for the opportunity to
19 meet with you today to discuss my appointment to the Board of
20 the California State Teachers' Retirement System. I was very
21 honored when almost a year ago the Governor appointed me to this
22 position, and I was pleased to have the opportunity to be of
23 service in my then newly adopted home state.

24 I come from a family of current and former public
25 school teachers, starting with my grandparents in Oklahoma,
26 including a mother and sister in Texas, a sister who volunteers
27 in Louisiana, and uncles, aunts, and cousins in the public
28 schools of Oklahoma, Kansas, Arizona, New Mexico, and

1 California.

2 Though I did not pursue a teaching career myself,
3 I have worked as a volunteer in inner-city schools as well, and
4 I teach as an adjunct faculty member at various law schools. My
5 husband has been on the faculty of the Law School at UCLA since
6 1985 and is a beneficiary of the UC retirement system.

7 With all of this background, I have a good sense
8 of the financial challenges that teachers face, and I hope that
9 others from the private sector with relevant skills and
10 experience are willing to act in a similar fiduciary capacity in
11 managing retirement assets of my relatives.

12 I bring to this position significant experience
13 as a member of other boards, including a six-year term as Chair
14 of the Visiting Committee at Harvard Law School, and 17 years as
15 general counsel to boards of private and public companies.
16 Indeed, my very first professional experiences as law clerk for
17 Judge John Minor Wisdom in the Fifth Circuit and Justice Sandra
18 Day O'Connor at the Supreme Court taught me early on the
19 importance of specially defined responsibilities, for it is the
20 job of the law clerk to assist the judge in expressing his or
21 her decisions, not to attempt to implement the law clerk's own
22 policy views on desirable outcomes in cases before the judge.

23 In addition, I bring significant experience in
24 real estate investment, having spent much of my career in
25 various real estate organizations and teaching courses in real
26 estate at Harvard Law School, Stanford Law School, UCLA Law
27 School, and elsewhere.

28 Finally, my work as general counsel and as an

1 adjunct law professor has given me significant experience in
2 corporate governance, and I'm currently in the final stages of
3 publishing a monograph on that general topic.

4 I have found the last eleven months of service on
5 the board to be challenging and educational. The board has been
6 collegial and thoughtful, and has addressed some difficult
7 issues, not always with complete consensus, but generally with
8 very careful deliberation. We've taken the new focus in the
9 private sector on governance and risk management as our general
10 model for our own deliberations. And I was honored when I was
11 asked to serve as Chair of the ad hoc committee on board
12 governance. We've made significant progress in areas like a
13 stronger audit committee, a good orientation process, and strong
14 board education in replicating good governance practices within
15 or own system. But we have much more work to do, so I was
16 pleased to take a leadership role in those endeavors.

17 The system today faces a number of challenges,
18 including most important the large unfunded liability that arose
19 out of the down markets of recent years and which must be
20 addressed to ensure the financial stability of the system. This
21 concern is clearly the most important issue that the board
22 members face. We've begun the process of serious study that we
23 hope will generate solutions to this problem. I believe all of
24 the current trustees are in agreement that we cannot attempt to
25 invest our way out of the problem by taking on unduly risky
26 investments in hopes of high returns.

27 We will need to work with independent actuaries
28 to understand fully the scope of the problem and the validity of

1 our current actuarial assumptions, and suggest solutions to you
2 as Legislators that consider possible changes in benefits and
3 contributions. These solutions are likely to be difficult, and
4 it will be a challenge to spread the burdens equitably. We are
5 committed to working cooperatively with all constituencies to
6 find a solution.

7 Our work is in some instances controversial. For
8 instance, it has been the view of the board that our returns
9 will be maximized by encouraging good corporate governance in
10 our portfolio companies. Reasonable people can differ, and we
11 on the board frequently do, about exactly how to implement that
12 concern and to ensure that our actions are always aimed at
13 maximizing the returns to our beneficiaries rather than to
14 further any other agenda, no matter how laudable such an agenda
15 might be for policy makers at the Legislature.

16 I recognize that in our constitutional system,
17 the policy making role is allocated to you in the Legislature.
18 Our role as trustees is to manage the assets of the fund for the
19 benefit of our beneficiaries.

20 I believe strongly that we can improve the return
21 for our beneficiaries by targeted, thoughtful efforts on
22 corporate governance, and that we can learn about our own
23 internal governance and our private equity arrangements from our
24 efforts in corporate governance in the public arena.

25 It would be disingenuous for me to speak to you
26 today as if there were no controversies surrounding my
27 appointment and the confirmation decision that you must make.
28 In part because some of the press has been inaccurate, I'd like

1 to take a few minutes to be sure that we're actually focused on
2 the real issue.

3 At our February board meeting, there were two
4 issues that received a fair amount of press attention. First,
5 we considered whether to oppose the Governor's budget proposal
6 which would shift, and in some instances reduce the funding that
7 is currently provided by the state to either school districts or
8 employees.

9 I voted to oppose the Governor's budget proposal.
10 As a fiduciary of the fund, I believed that the reduction in
11 funding for current employees would be a reduction in benefits,
12 in vested contract rights of our beneficiaries.

13 The second motion was to oppose the pending
14 proposals to offer only a defined contribution retirement plan
15 rather than a defined benefit plan to future teachers.

16 I voted against that motion. As the Minutes will
17 reflect, I explained at the meeting that the compensation for
18 future teachers is a policy matter to be determined by policy
19 makers. Our job as trustees is to manage the assets in the fund
20 for our beneficiaries. The job of determining who in the future
21 may become a beneficiary, and how they will benefit, is
22 committed to you as Legislators.

23 Many of the press accounts reported that I voted
24 in favor of proposals to offer only defined contribution plans
25 to teachers hired in the future. I did not. No such motion was
26 made, and if one had been made, I would have voted against it as
27 well because it, too, would have been beyond our role as
28 trustees. As trustees, we must devote our attention to our

1 beneficiaries and to maximizing their returns, not to trying to
2 make social policy for the state.

3 Our personal views on the best retirement package
4 for future teachers are no more within our responsibility as
5 trustees than our views on class size, summer pay, educational
6 qualifications, and so on.

7 I should also clarify the nature of my contacts
8 with the Governor's administration. I have never met the
9 Governor. I've only seen him in the movies.

10 I was contacted by his appointments office for
11 this position, asked a few questions about my background, told
12 that there would be a background check, and told about the
13 confirmation process.

14 I was not asked any questions about likely
15 positions on matters that would come before the board. The
16 Governor then appointed two Democrats, two Republicans, and me,
17 and independent unaffiliated with either political party.

18 After those conversations, my next contact with
19 the Governor's Office came after our February board meeting and
20 after the Governor's decision to withdraw his other nominations.
21 I received a call telling me that the Governor still wished to
22 proceed with my nomination.

23 There's one other matter that I'd like to address
24 that's not in the comments that I've distributed to you because
25 I only figured it out this morning.

26 I understand that there have been some concerns
27 about a \$5.9 billion dollar number that I believe some
28 constituencies think our actuary has indicated would be a cost

1 to the system related to pending proposals.

2 I believe that I finally figured out this morning
3 where I think that number comes from. I believe it comes from a
4 misreading of our board materials. That \$5.9 billion dollar
5 number is actually the actuary's assessment of what it would
6 cost the state to add a defined contribution plan on top of the
7 existing defined benefit plan to be continued for current
8 beneficiaries.

9 Again, I believe if you have 5.9 billion extra
10 dollars, that that's a decision for you as Legislators to make
11 as to how to spend it, rather than for us as trustees to oppose.

12 I've worked hard for the board in the last eleven
13 months. I believe that my co-trustees would tell you that I
14 have prepared meticulously, participated actively, and worked
15 hard to understand the implications of the issues before us.
16 I've been pleased to dedicate these efforts to the retirement
17 security of our beneficiaries.

18 During this period, I have served at your
19 pleasure and at the pleasure of the Governor. If you choose to
20 confirm me, I will continue serving and will be very pleased to
21 do so. But if you choose not to confirm me, I will return to my
22 efforts in the private sector and my teaching quite happily.

23 Throughout the year we faced difficult issues.
24 And as each issue came before us, I voted in my best judgment as
25 a trustee, even though I knew throughout the year that I was
26 subject to removal at any time by your disapproval, and recent
27 events have made clear that I was also subject to removal by the
28 Governor.

1 If you confirm me, I will bring that same
2 independence in voting my best judgment as a trustee on the
3 issues that come before this board in the future. I'm sure that
4 I will make mistakes, but they will not be because I'm unduly
5 influenced by the politics of a question.

6 If you do not confirm me, I will continue with my
7 other professional activities, and I will simply be pleased that
8 I've had the opportunity to serve for this eleven months and
9 grateful to have had the opportunity to work with the dedicated
10 and hard-working staff at Cal STRS and a collegial and
11 hard-working board.

12 I'd be happy to answer any questions you have for
13 me.

14 CHAIRMAN PERATA: Thank you.

15 Questions by a Member of the Committee?

16 SENATOR ASHBURN: I just have one, and that has
17 to do with the advisory vote, as I understand it, that was taken
18 at the February meeting relative to a proposal to change from a
19 defined benefit plan to a defined contribution plan.

20 Would you explain what that vote actually was,
21 because I think there's maybe some misunderstanding about what
22 it was that you were asked to vote on with respect to that
23 particular proposal?

24 MS. SMALLEY: We were asked to vote on whether
25 the system should take a position opposing proposals to switch
26 for future teachers only from a defined benefit plan to a
27 defined contribution plan.

28 SENATOR ASHBURN: So, the question before you

1 was, should a position be taken either in favor or in opposition
2 at all; is that correct?

3 MS. SMALLEY: The motion as it was placed to us
4 was to oppose. The question that I felt like you had to resolve
5 to get to the question of whether you oppose is, should you take
6 a position at all.

7 My view was we should not take a position at all.
8 And my comments at the meeting were directed to that. I believe
9 very strongly that our duty as trustees is to focus on the
10 assets that we have in the fund to maximize the returns for the
11 benefit of our current beneficiaries. And I didn't feel that it
12 was appropriate for us to use trust assets and trust resources
13 to seek to influence what I view as a policy decision for the
14 Legislature.

15 SENATOR ASHBURN: And I want to compliment you.
16 In the written statement that you just presented to us, the
17 clarity with which you identified your view of the role of the
18 board with respect to policy matters with respect to education,
19 or benefits, or other matters that might effect teachers that
20 would be under the purview of the board.

21 I also, you know, want to compliment you on your
22 independence. Your statement of independence, I think, is
23 exceedingly important, that in assuming a fiduciary
24 responsibility as a member of a retirement board, that there is
25 no political answer to what is the best way to handle the
26 retirement funds of the employees. And your good judgment is
27 what we're looking for, so thank you.

28 MS. SMALLEY: Thank you.

1 CHAIRMAN PERATA: Senator Bowen.

2 SENATOR BOWEN: Thank you.

3 First, I should make it clear that just because I
4 turned down Harvard to go to Mr. Jefferson's university, a few
5 hundred miles south, doesn't mean that I hold any kind of
6 predisposition.

7 Although, you have had some interesting goings on
8 with regard to the capability of women in the sciences on your
9 campus. I see that you're familiar with some of those remarks.

10 MS. SMALLEY: I have been following those
11 stories.

12 SENATOR BOWEN: For the benefit of my male
13 colleagues, one of the deans of Harvard expressed the opinion
14 that perhaps there were biological differences that led to there
15 being so few women in the sciences. It caused a fair amount of
16 controversy and concern.

17 The Director of Finance, Tom Campbell, and I have
18 been having an interesting series of discussions about the
19 proposals to move from defined benefit to defined contribution
20 plans.

21 I've been particularly concerned about the impact
22 on women, in part because we live longer, and in part because we
23 still don't have pay parity, and we tend to take a year or two
24 out, or few more, on a more consistent basis than men do,
25 presumably in the matter of families.

26 I asked STRS some questions about whether the
27 Governor's proposal would have a disproportionately negative
28 impact on women, who make up 70 percent of the active STRS

1 members. The answer that I got was, using the same contribution
2 rates, a teacher with 25 years of service could expect to
3 receive \$1,920 per month, with a 2 percent annual adjustment,
4 which is just more than half of the current average retirement
5 allowance of \$3606 per month.

6 But in your view, your fiduciary duty is only to
7 the current members? Even if this kind of a policy would have
8 an impact on future STRS members, your fiduciary responsibility
9 is --

10 MS. SMALLEY: If those people become STRS
11 members, then I would have a fiduciary responsibility to them.

12 If you in the Legislature determine that in the
13 future people are not beneficiaries of STRS, at that point there
14 is no fiduciary responsibility to them, there's a fiduciary
15 responsibility to our beneficiaries.

16 SENATOR BOWEN: One of the concerns that was
17 raised was that -- and it's similar to the discussion that's
18 going on at the national level about private retirement plans --
19 is that the change-over would have a significant adverse impact
20 on the current beneficiaries, because when you close a plan, you
21 no longer have a part of the contributions coming in for the new
22 employees that go to make up the benefits that are paid.

23 This plan, as I understand it, is about 82 or 83
24 percent funded right now?

25 MS. SMALLEY: That's about right.

26 SENATOR BOWEN: So, isn't there an impact even of
27 making a change in the future on the current beneficiaries
28 because of the fact that once you close the plan, you can only

1 cut benefits, increase the agency contribution, or increase the
2 taxpayer contribution?

3 MS. SMALLEY: Well, our plan is different from
4 Social Security, in that we are not a pay-as-you-go plan. We
5 are a funded plan. And although currently we have an unfunded
6 liability that's a product of recent years investment
7 experience, our goal is to be 100 percent funded.

8 The unfunded liability today is actually the
9 liability of the state because of the way our plan works. The
10 state does back-stop the benefits for our beneficiaries.

11 I guess if I were a new teacher, I'd kind of turn
12 that question and say, is it really appropriate for us to use
13 the benefits that -- the deductions from salary and the employer
14 contributions for new teachers to pay existing liabilities to
15 existing beneficiaries? And I think that would be unappealing
16 to a new teacher.

17 SENATOR BOWEN: Well, I understand. When you
18 describe it that way, it probably sounds about as appealing as
19 many surgical procedures that some of us underwent as kids to
20 have our tonsils removed.

21 But my experience working, doing pension law, was
22 that it takes, even if your goal is full funding, at some point,
23 because of variations in the stock market, you're going to be
24 over or underfunded. And when you start a new plan, you
25 certainly are going to be underfunded for some considerable
26 period of time while you begin making the contributions.

27 So, it doesn't surprise me to see that there's a
28 shortfall right now. I actually think it should provoke all of

1 us to have a discussion about whether we excuse agencies from
2 making contributions solely because the market is doing well,
3 and the value of the portfolio has gone up.

4 But I noted that one of your colleagues wrote in
5 an opinion piece that the proposal, and this is the heart of it,
6 that the proposal would undermine the funding for Cal STRS, so
7 we did our fiduciary responsibility and voted to oppose the
8 proposal.

9 Do you disagree with that assertion?

10 MS. SMALLEY: Yes, I do.

11 SENATOR BOWEN: Can you explain?

12 MS. SMALLEY: Well, I think it's clear that if
13 there were future beneficiaries and no future funding for those
14 beneficiaries, it would effect future funding for future
15 beneficiaries.

16 But we're looking at existing beneficiaries and
17 their existing funding. We will continue, as I understand it on
18 all current proposals, with the vested benefits of those people
19 who are our current beneficiaries, so that there would be
20 continued contributions for them during their employment. It's
21 only new employees starting in the future. So for our
22 beneficiaries, there would be ongoing funding.

23 SENATOR BOWEN: Except that you're 82 percent
24 funded, and the amount that's being contributed to pay for the
25 requirement benefits of those who are either retired or will
26 retire under that system is not sufficient to pay --

27 MS. SMALLEY: We do have a shortfall today. And
28 as you pointed out, it's very hard to hit 100 percent exactly.

1 So, over the life of a pension fund, you would expect that that
2 number is going to vary above or below 100 percent. And there
3 always is a temptation when it's above 100 percent to come ask
4 for enhanced benefits, and when it's below 100 percent, then we
5 feel bad about that.

6 SENATOR BOWEN: So if you close the plan, how
7 does the shortfall get made up?

8 MS. SMALLEY: Well, today that is ultimately the
9 obligation of the state, and that wouldn't change under any of
10 the plans that are currently proposed.

11 So, the shortfall today is a problem that we have
12 in any event. Whatever the Legislature ultimately decides to do
13 as to future employees, we would need to address that, and we
14 need to address it in the context of our existing plan.

15 SENATOR BOWEN: Thank you.

16 CHAIRMAN PERATA: Senator Cedillo.

17 SENATOR CEDILLO: So, it's your point of view
18 that the fiduciary extends only to those current and existing
19 members, beneficiaries, not to the preservation of the fund
20 itself?

21 MS. SMALLEY: Well, to the preservation of the
22 fund for our beneficiaries.

23 SENATOR CEDILLO: But only for current?

24 MS. SMALLEY: Right, and if the Legislature
25 determines to continue the plan for future employees, we would
26 have a duty to them as well.

27 If the Legislature decides to do something
28 entirely different, including a more attractive plan for other

1 beneficiaries, they would be subject to that plan, we would
2 still have the duty of taking care of the assets that are under
3 our plan for the benefit of our beneficiaries.

4 SENATOR CEDILLO: It seems static to me. We may
5 just disagree, but it just seems to me that, I mean, you have
6 your membership, right? Your duty extends to them. That it's
7 not a perspective, the fiduciary does not exit for today but
8 actually exists for the most recent member. And that there is
9 then the duty that would require you to think about that member
10 as it relates to the future.

11 MS. SMALLEY: Yes, and my understanding is that
12 all proposals contemplate that for current beneficiaries, people
13 who are employed as teachers today, the funding goes on into the
14 future throughout their careers. So, we do look to them for the
15 future, and we do clearly, clearly have a fiduciary duty to them
16 for the future.

17 SENATOR CEDILLO: Okay.

18 CHAIRMAN PERATA: Nothing further?

19 Anyone in support, or those in support please
20 come forward.

21 Anybody in opposition?

22 MS. SANCHEZ: Hi. My name is Delores Sanchez,
23 and I am representing the California Federation of Teachers,
24 with a membership of nearly 80,000 teachers, all of whom are
25 members of the State Teachers' Retirement System.

26 I am here before you today to oppose the
27 confirmation every Mary K. Smalley to the STRS Board. Our
28 opposition lies on the basis of her vote to support legislation

1 that would eliminate the defined benefit plan.

2 My members believe that that vote represented a
3 violation of the fiduciary duties of a public retirement system
4 board, as these duties are prescribed under the State
5 Constitution and in state statute as specific to STRS.

6 And if I may, I just wanted to read a sentence or
7 two from the State Constitution. And that is,

8 "The members of ..."

9 Article 14, Section 17(b)

10 "The members of the retirement
11 board of a public pension or
12 retirement system shall discharge
13 their duties with respect to the
14 system solely in the interest of
15 and for the exclusive purposes of
16 providing benefits to participants
17 and their beneficiaries."

18 The Constitution goes on to say that,

19 "A retirement board's duty to its
20 participants and their
21 beneficiaries shall take
22 precedence over any other duty."

23 It is inconceivable to my members as to how
24 Board Member Smalley could support legislation that the STRS
25 actuarial counsel deemed actuarially unsound and that would cost
26 the system billions of dollars. We do not believe that this was
27 in the interest of teachers.

28 It is inconceivable to us that Board Member

1 Smalley could support legislation that would eliminate death and
2 disability benefits.

3 It is inconceivable to us that she would support
4 legislation that would remove the only guaranteed benefit that
5 teachers have, because they do not pay into Social Security.
6 This, we believe, is not in the interest of our members.

7 I know a lot of people are going to touch on
8 different issues, but I just wanted to key in on two issues, as
9 we really believe that there was a violation of her fiduciary
10 responsibility to our members.

11 And I have to say that in the existence of the
12 California Federation of Teachers, and in my 14 years of
13 lobbying with the CFT and my predecessor, Mary Bergan, who's now
14 President, we have never once come before the Legislature to
15 oppose a STRS member's confirmation. And so, I hope that tells
16 you the extreme nature that we feel presented today, that we
17 needed to come and oppose Ms. Smalley.

18 We ask that you oppose her confirmation. Thank
19 you.

20 CHAIRMAN PERATA: Thank you. I believe that
21 Senator Battin has a question.

22 SENATOR BATTIN: I'm unclear.

23 Ms. Smalley, did you cast a vote in favor of the
24 Governor's plan? Or did you cast a vote saying that you didn't
25 want to oppose the Governor's plan because you didn't think it
26 was the position of the STRS Board to set public policy?

27 MS. SMALLEY: I cast a vote saying I did not want
28 to oppose the Governor's plan because I didn't feel it was an

1 issue that we, as trustees, had responsibility for. I felt it
2 was beyond our role.

3 SENATOR BATTIN: And then your point is that
4 because the STRS staff said that the Governor's plan is
5 fiduciarily irresponsible --

6 MS. SANCHEZ: Actuarially unsound.

7 SENATOR BATTIN: That she should have cast the
8 vote No.

9 MS. SANCHEZ: Yes, as prescribed by the duties in
10 the Constitution as a fiduciary of the system.

11 SENATOR BATTIN: A few years ago, we had both
12 STRS and PERS here asking us, as the Legislature, to increase
13 benefits. Then investments went down, and we ended up with a
14 deficit. That would make it actuarially irresponsible to do.

15 So would it be your position that the board
16 should never recommend a position to the Legislature on
17 something like that? Because the board did. The board said, we
18 think it's all right; there's enough money until way out on the
19 horizon for there to be benefits paid, so we think that you
20 should increase these benefits.

21 That would be, as it turned out, it would be
22 actuarially irresponsible to do.

23 MS. SANCHEZ: If at the time their own actuaries
24 were saying that it was actuarially unsound, I would agree.

25 SENATOR BATTIN: At the time it was a guess.
26 They were betting on the come of the stock market, because
27 that's all it's based on.

28 MS. SANCHEZ: That's all we have.

1 SENATOR BATTIN: That's right.

2 MS. SANCHEZ: That's what actuaries do.

3 SENATOR BATTIN: So let's go back to where we're
4 at now, where you're saying that if it was sound before, but it
5 turned out to be wrong, that's the best we can do, is a guess.

6 Now you're saying that you're basing your
7 opposition to Ms. Smalley based on the same people saying just
8 the opposite? And you're saying that now that information is
9 correct?

10 I mean, you've got to have it one way. You can't
11 have it both ways. You're going both ways on this thing.

12 MS. SANCHEZ: Well, I'm not an actuary. That's
13 what they hire actuaries for. And their actuary turned out to,
14 you know, possibly not be correct at that time. We had no basis
15 by which to contradict them at that time, and we have no basis
16 by which to contradict them now.

17 SENATOR BATTIN: But they were wrong.

18 MS. SANCHEZ: Yes, they were.

19 SENATOR BATTIN: So, could they be wrong again?

20 MS. SANCHEZ: Possibly, but probably not, I would
21 think.

22 SENATOR BATTIN: How did you base that, probably
23 not?

24 MS. SANCHEZ: They seem to have -- it seemed that
25 the board members and staff -- board members and staff accepted
26 what they said as correct. And so with that, we believed it was
27 correct as well.

28 SENATOR BATTIN: They said it was correct before.

1 You're in a logical track here?

2 I just don't think there's an answer to this.
3 There's not.

4 You were wrong before. If you were wrong before,
5 you can't say we're going to be right in the future.

6 MS. SANCHEZ: You can't say you're going to be
7 wrong either.

8 SENATOR BATTIN: That's right. I agree with you.
9 You can't say anything.

10 MS. SANCHEZ: You're only dealing with what you
11 have before you in the present day. And in the present day
12 their actuaries are saying that it is unsound, and therefore we
13 believe that based on that, she should not have voted --

14 SENATOR BATTIN: Wait a second. They were wrong
15 in the past. Ultimately who is responsible for making the
16 decision, just like then, is the Legislature.

17 Now it's a different position. The board can
18 say, we have a position on this because we think that it's
19 actuarially prudent, or we can sustain it, or we'd like to see
20 the benefit increases. They can say that.

21 And it's actually up to the Legislature, or in
22 this case, without the Legislature's activity, the public. But
23 there's a policy decision to be made.

24 From listening to Ms. Smalley, that wasn't her --
25 her position wasn't "I am for the Governor's position." It was,
26 "I don't think that it is our responsibility as a board of STRS
27 to do this."

28 You could take the same argument and look at it

1 backwards and say, "Well, you shouldn't have done it then
2 because you were wrong."

3 I understand your point. I get it. And I
4 understand all the reasons everybody's here.

5 But I just don't think that your logic is
6 consistent. I think you're saying, "Well, that was then; this
7 is now, but take our word for it, we got better."

8 MS. SANCHEZ: Well, if you say there's no answer
9 to this, then there's no answer.

10 But I would say that if she was disagreeing with
11 -- it seemed like she was disagreeing with the premise for the
12 vote, then she should have abstained, but she didn't abstain.

13 SENATOR BATTIN: Ms. Smalley, have you ever
14 abstained on a vote at the board before?

15 MS. SMALLEY: I think only in cases where I had a
16 conflict of interest.

17 SENATOR BATTIN: You know, there's some people
18 that just don't abstain. There are some that do, and there are
19 some that don't. That's why I asked her. If she had conflict,
20 other than that, she's probably of mind saying, "I'm here to
21 vote, and I'm going to vote."

22 I understand the concern in the opposition. I
23 just don't accept that logic of it, because you've got to say,
24 you have to admit, that where, if you're saying that the board
25 was good in the past and was wrong, that you just can't take the
26 same logic and apply it to the future. Doesn't work for me.

27 So thank you.

28 CHAIRMAN PERATA: Senator Cedillo.

1 SENATOR CEDILLO: It kind of reminds me of the
2 fact that everybody voted for deregulation. Everyone. I think
3 that was 120 votes?

4 SENATOR ASHBURN: That's not correct.

5 SENATOR CEDILLO: Was it 118?

6 SENATOR ASHBURN: Mr. Bordinaro abstained and
7 never was acknowledged for that.

8 SENATOR CEDILLO: Duly noted, and there was
9 someone else?

10 SENATOR BOWEN: Hayden.

11 SENATOR CEDILLO: Hayden, of course.

12 SENATOR ASHBURN: And your point is?

13 [Laughter.]

14 SENATOR CEDILLO: And so the point is this, that
15 we have duties of due diligence. And so there is no question
16 that in 1996 there was a great sense that everybody exercised
17 due diligence, and it didn't work out.

18 But then we didn't say, "Then let's not take any
19 information. Let's not rely on any. Let's proceed." It's an
20 argument to say we should know nothing because that's the only
21 way that things work.

22 I think you are consistent in that you have a
23 duty of due diligence to take information from people that you
24 hire who you assume, through your hiring process, will be
25 competent. So, you have actuarials whose job it is, that's what
26 actuarials' business is, is assessing risk, evaluating it. We
27 would like them to always be right, but that is not the way the
28 world works.

1 We rely on experts, whether it's lawyers, or
2 doctors, or actuarials, and sometimes they're wrong. Do we stop
3 seeing doctors, and lawyers, and actuarials? No, I think we're
4 obligated. We have obligations to do so, and do so with due
5 diligence. We don't see so disbarred lawyers or doctors who are
6 no longer granted that privilege of being doctors, or actuarials
7 who fail or who break the law in performing their duties, as
8 many, to our great distress, do.

9 We have a duty of due diligence, and in that you
10 relied in the past on that, and you rely on that today for the
11 decisions that you make.

12 My sense is that when you vote, you vote No, and
13 the actuarial comes and says, "This is not a good idea; this is
14 not going to work," you vote No because you say that's beyond
15 our scope.

16 It is their duty and their obligation to tell you
17 that your actions or that these actions are not sound for the
18 fund, that the policy is not a good policy. Of course there's
19 risk in it, but it's nevertheless their duty to bring that to
20 your attention.

21 If you vote No and say, "I don't want to take
22 that information; that's beyond our scope," I mean, that's the
23 vote you take. Other people felt that it was their duty to note
24 as trustees that this was unsound policy for the fund as
25 fiduciaries.

26 Obviously you disagreed with your colleagues.
27 That's why we're here.

28 The Governor has a different point of view on

1 that and felt somehow that, and I assume they're acting with
2 their fiduciary capacity, trying to act with due diligence, but
3 the Governor had a different point of view. And that's why
4 you're here before us now.

5 MS. SMALLEY: May I respond?

6 SENATOR CEDILLO: Sure.

7 No, I'm sorry, you cannot. It's beyond my scope
8 to determine whether or not you can respond.

9 CHAIRMAN PERATA: You may.

10 MS. SMALLEY: I do think that my colleagues on
11 the board, for the most part, and I differed on this question.

12 I don't believe -- I believe that the comments
13 that my colleagues on the board made at the time went to their
14 view of policy for teachers in the future, and not to the
15 question of actuarial soundness for the fund currently, which
16 was actually not addressed in the actuary's report given to us
17 at the meeting.

18 I think that my colleagues and I disagreed about
19 whether the policy concerns that I believe motivated them were
20 legitimate concerns for a trustee to consider. I'm sure they
21 did it in their best judgment as trustees. I just disagreed
22 with their decision as to how far their responsibility as
23 trustees extended beyond the management of the assets of the
24 trust.

25 SENATOR BATTIN: So, you were saying that you
26 didn't think it was in the scope of your position to take a
27 position on what was in front of you?

28 MS. SMALLEY: That's correct.

1 CHAIRMAN PERATA: Senator Ashburn.

2 SENATOR ASHBURN: Just to clarify. I was excited
3 a few minutes ago, and I've calmed down since.

4 Clarify again with respect to the line of
5 questioning from Senator Cedillo with respect to the actuary.

6 Was the vote based on information presented to
7 the board from an actuary that the proposal to switch to a
8 different retirement system was of concern?

9 MS. SMALLEY: We were given a letter from the
10 actuary at the time that we sat down to vote -- it was not part
11 of our advance materials -- that discussed the impact of these
12 changes and came to some numbers that I referred to earlier for
13 the impact on the state of adding a defined contribution plan to
14 the continuation of the defined benefit plan for the current
15 beneficiaries.

16 SENATOR ASHBURN: So the actuary's letter,
17 communication, in no way indicated that there was a threat to
18 the current beneficiaries or the future beneficiaries of the
19 plan as it exists today, over which you view your role as a
20 fiduciary, but that there might be a financial impact to the
21 state general fund in the future?

22 MS. SMALLEY: That's correct. That's what the
23 the letter said.

24 SENATOR ASHBURN: That's quite different than
25 what has been characterized here, I would say.

26 MS. SMALLEY: I think there is some confusion,
27 and I think that's where the \$5.9 billion dollar number comes
28 from. I believe that comes from the actuary's letter which was

1 summarized for us in our materials in advance as the additional
2 cost to the state of running the two programs, because there
3 would be a continuation of our program for probably as much as a
4 hundred years.

5 SENATOR ASHBURN: If I can paraphrase, and you
6 can agree or disagree with my characterization.

7 The actuary produced a letter which said, "This
8 is a topic because the Governor has proposed this. If it were
9 done, it would cost the state potentially, because the state has
10 an obligation under a defined benefit plan, X number of dollars
11 in the future."

12 MS. SMALLEY: Yes, and I believe also worked off
13 the understanding of the contributions to the defined
14 contribution plan in the future.

15 SENATOR ASHBURN: Right.

16 Thank you.

17 CHAIRMAN PERATA: Glad we got that cleared up.

18 MR. LOW: David Low, California School Employees
19 Association, also representing California Families Against
20 Privatizing Retirement, which is about 40 organizations
21 representing people in Cal STRS and Cal PERS.

22 We disagree with Ms. Smalley's premise that the
23 decision she made was outside her scope of her fiduciary duty,
24 and also her characterization of the \$5.9 billion dollars. We
25 think that her interpretation of that is incorrect.

26 It's interesting to note that she voted against
27 the \$500 million cut that the Governor proposed and said that
28 that was a proposal that hurt the current employees, and in fact

1 we believe that the other vote had a much more draconian effect
2 on current employees, and thusly, is within her scope of her
3 fiduciary duty.

4 The \$5.9 billion dollar cost is not simply the
5 cost to fund a new plan, a new defined contribution plan for new
6 employees. The \$5.9 billion dollar cost is predominantly the
7 cost to close the current system, and Gadsby rules require you
8 to adopt a closed system actuarial analysis. Adopting that
9 closed system analysis increases your immediate unfunded
10 liability.

11 So, our view -- in addition, it requires you to
12 make different assumptions on your cash flow, because now you
13 have no new money coming in, but you have benefits to pay out,
14 which also, because you have to increase your cash flow
15 requirements, requires you to reduce investment assumptions,
16 which means you're going to earn less money on the money that
17 you have.

18 All of those things put together add up to this
19 \$5.9 billion dollar cost that now increases the unfunded
20 liability to the current system, affecting the current
21 employees.

22 Nothing could affect the current employees more
23 than punching another \$6 billion dollar hole in the amount of
24 cost to the system. Therefore, increasing a lot of pressure to
25 eliminate nonvested benefits or do other things to save cost to
26 the system, especially in a situation where the state already
27 faces an \$8 billion dollar budget deficit.

28 So, we would state that we think she was required

1 to consider this effect on the current employees, that that is
2 her fiduciary responsibility, and she failed in that respect.
3 That's why we ask your No vote.

4 CHAIRMAN PERATA: Thank you.

5 Anyone else? Please come forward.

6 MR. COLLINS: Mr. Chair and Members, Bill
7 Collins, California Teachers Association.

8 I've been attending STRS Board meetings for about
9 the last seven years. Ms. Smalley sees her role differently
10 than that of any other trustee I've ever worked with, and I've
11 worked with STRS Board trustees appointed by four governors,
12 three Republicans.

13 And STRS has always been in the forefront of
14 advising the Legislature, every single piece of legislation.
15 STRS has not absented itself. Whether or not it's a benefit
16 increase, or saving the general fund \$2.7 billion dollars, STRS
17 was there, working on those deals, sponsoring the legislation.

18 Can you imagine if STRS -- if the other trustees
19 had voted as MS. Smalley, STRS would have no position on the
20 proposed constitutional amendment. Now, whether or not you
21 agree with the constitutional amendment, to have STRS say, "Oh,
22 it's up to the Legislature. We're not going to advise you on an
23 issue that would withhold hundreds of millions of dollars in an
24 annual funding stream to Cal STRS."

25 As a fiduciary, you have a responsibility to be
26 concerned about that funding stream. And that funding stream,
27 as Ms. Bowen first pointed out, would close.

28 So, I'm just incredulous that Ms. Smalley would

1 say, "Well, that's a policy decision for the Legislature."

2 We think it'd be irresponsible for STRS to not
3 take a role. And if STRS wasn't advising the Legislature, you
4 as Members, including Members of the Senate Republicans, would
5 be saying, "Where is STRS on this issue? Where is STRS on this
6 bill?"

7 They can't sit it out. If you're willing to be a
8 trustee, you have to be involved in these issues. And
9 Ms. Smalley, on the major issue ever -- ever taken with regards
10 to STRS, this is the major issue, is willing to say, "It's up to
11 you."

12 So, we think she's not appropriate to be
13 qualified, and we ask that the nomination be held in committee.

14 With me today, she's been to more STRS Board
15 meetings than anybody I know, Beverly Carlson has been to, she
16 figures, about 120 meetings of the STRS Board.

17 Beverly's a recent retiree, taught for 38 years
18 at April Lane Middle School in Yuba City. Beverly taught grades
19 one through four. She's represented CTA at those meetings, and
20 she'd like to speak to this issue as well, please.

21 CHAIRMAN PERATA: Certainly, welcome.

22 MS. CARLSON: Thank you.

23 I'm a third generation teacher, native
24 Californian from Marysville-Yuba City area. My grandmother and
25 mother both were beneficiaries of Cal STRS, as I am now. The
26 three of us contributed 107 years collectively to public
27 education. So, I come from a long line of teachers from a small
28 community about 50 miles north of here.

1 This is a profound change in something that has
2 been absolutely necessary for the survival of retired teachers,
3 and it's a large gender issue.

4 When I first started attending the meetings of
5 Cal STRS, there was a 40-year unfunded obligation. But with the
6 brilliance of our staff, and our investment staff, and
7 evaluations they do, at one point we were overfunded. And
8 because of the stock market, we're not funded now.

9 But I have faith, as do current retirees, in our
10 system as it exists, and the whole concept of defined benefit.
11 Beneficiary and benefit, sounds like the same root word would go
12 to those two to me.

13 And we don't want our teachers to go to college
14 to learn how to manage their money. We want them to go to
15 school to be a good teacher, and to teach the future of this
16 country.

17 So, on behalf of California Teachers Association
18 Retired, we urge that you oppose this nomination. Thank you.

19 CHAIRMAN PERATA: Thank you.

20 MS. BAKER: Good afternoon. Jennifer Baker with
21 the Faculty Association of California Community Colleges. I'm
22 also here in opposition to Ms. Smalley for the State Teachers'
23 Retirement Board.

24 I just wanted to note that at the February board
25 meeting, there was discussion between board members regarding
26 the impacts that this could have on current beneficiaries as
27 well as future beneficiaries of the State Teachers' Retirement
28 System. And there was concern about meeting the future

1 obligations for members in the future, and meeting obligations
2 to current members. And it was directed to the Teachers'
3 Retirement Board members by staff that had done extensive work
4 on trying to understand the fiscal impacts of these two
5 proposals on the system and its future beneficiaries, the
6 long-term harm that it could have. And this is the reason why
7 the majority of the board decided to oppose these two proposals.

8 And we would just encourage you to look at the
9 fact that other members were really looking out for the
10 fiduciary soundness of the State Teachers' Retirement System.
11 That's the kind of board members that we need, folks looking out
12 for the current system and the future members.

13 So, we would encourage you to oppose Ms. Smalley.

14 CHAIRMAN PERATA: Thank you.

15 MS. SANCHEZ: Libby Sanchez on behalf of the
16 Teamsters and the public sector wing of Laborers' International
17 Union of North America, also here in opposition to Ms. Smalley's
18 confirmation.

19 I find it really difficult to understand how,
20 even though there are policy implications to the decision that
21 Ms. Smalley decided she didn't want to make, that she did not
22 deem there to be fiduciary responsibility decision implications
23 as well. There clearly were, both to existing employees and
24 future employees.

25 Additionally, I think there's a clear distinction
26 between relying on an actuarial mistake which would increase
27 benefits to an existing plan, and relying on an actuarial
28 mistake, which may or may not be a mistake, which would recreate

1 the wheel and come up with an entirely new plan.

2 For those reasons, and for the reasons already
3 stated, we're in opposition. Thank you.

4 CHAIRMAN PERATA: Thank you.

5 MS. McCUNE: Good afternoon. Caitlin McCune on
6 behalf of the California Labor Federation.

7 For the reasons already stated, we oppose this
8 confirmation. Thank you.

9 CHAIRMAN PERATA: Thank you.

10 Anyone else? Question?

11 SENATOR BATTIN: I have a question, I guess. I
12 don't know if anybody can answer it.

13 So, if you are a member of the Cal STRS Board,
14 and your sole responsibility was to be fiducially responsible,
15 would you therefore then always be against a benefit increase?
16 Wouldn't that be the responsible thing to do, if the only thing
17 you were looking out for was the STRS fund?

18 Because if you voted for a benefit increase, and
19 the stock market went down, then you would have a hole. So,
20 you'd always never vote for a benefit increase, and the board
21 should never do that. If the board ever took a position to have
22 a benefit increase, that would be irresponsible to do.

23 MS. SMALLEY: Well --

24 SENATOR BATTIN: I don't know. I'm in these
25 logical traps, so I don't know if you want to answer the
26 question.

27 MS. SMALLEY: I'll take a stab at it, if you'd
28 like me to.

1 I think our duty is to maximize the assets for
2 the benefit of the beneficiaries. I think the ultimate decision
3 as to any benefits is committed to you as Legislators.

4 I would assume that you would want our view on
5 whether or not the fund could withstand an increase in benefits,
6 and that it would be appropriate for us, if we felt that our
7 funding was adequate, to use the assets for the benefit of our
8 beneficiaries. That seems to me to be a use for our
9 beneficiaries, and that's the purpose of our fiduciary
10 duty.

11 SENATOR BATTIN: Okay, thank you. That does
12 help.

13 SENATOR ASHBURN: Comment, if I may.

14 I'm amazed by the testimony, to be very honest,
15 because we're talking -- the entire conversation has been about
16 a single vote at one meeting on one item. And a comment was
17 made by the representative of the CTA that because of this vote,
18 you are unqualified.

19 I mean, I've looked at your qualifications. We
20 are entitled to a difference of opinion, and that has nothing to
21 do with a lack of qualification to this position, to hold this
22 position, or any position.

23 You are an extraordinarily qualified person. You
24 have explained, I think, with precision why you did what you
25 did, and I'm interpreting that the opposition to you is not to
26 you for your holding the position on the STRS Board, but it is a
27 way of saying, "We don't like the Governor's proposal to change
28 from a defined benefit plan to a defined contribution plan, and

1 so therefore we're going to try to tube this one appointment."

2 That's unacceptable to me. I mean, if somebody
3 wants to oppose the Governor's policy position, let them do so.
4 Or if they want to support it, let them do so.

5 But to say that you are not qualified to hold
6 this position because of that is just unbelievable.

7 SENATOR BOWEN: Mr. Chair, I think it's
8 appropriate to note for the record that Mr. Ashburn's statement
9 that the test is, if someone wants to support the Governor's
10 provision, do; if you wish to oppose it, then do.

11 It certainly didn't apply to the four trustees
12 whose nominations were revoked based on one vote.

13 SENATOR CEDILLO: That's my question, because we
14 want this board to be unpoliticized; right? You have a
15 fiduciary duty.

16 I disagree with you. I think your assessment of
17 your duty is too narrow. You are imminently qualified, as
18 Mr. Ashburn said here. You're an imminently qualified person.

19 Reed Hastings was an extraordinary individual,
20 extremely qualified in many respects and much accomplished, yet
21 he had a failure to appreciate his obligation to apply the law,
22 and for the law to apply to him. But he had duties which the
23 law has encumbered him and all of us with, and he failed to
24 realize that they applied to him.

25 I have a similar sense for you. This has not
26 gone to court. It has not been adjudicated, but I do have a
27 sense that there's a breach of duty here, that the narrow
28 definition that not acting or acting in opposition is inadequate

1 for your obligation to comply with your legal duty as a
2 fiduciary.

3 So, it has not been adjudicated, but I want to be
4 candid with you with respect to a difference, at a minimum, that
5 we have on this for you to perform in your capacity as a
6 fiduciary.

7 And I agree with you, Mr. Ashburn. We would hope
8 that this body, that Cal PERS and Cal STRS would not be a
9 politicized body. That after the appointments, people should be
10 free and unencumbered to exercise their conduct with due
11 diligence as provided under the law, with direction from experts
12 that they hire.

13 So, I will just assume that your concern for a
14 nonconfirmation of Ms. Smalley for one vote would be an equal
15 concern for those who were removed by the Governor. I trust
16 that you will be wholly consistent in your concerns that we
17 depoliticize these two have important bodies that have an
18 extraordinary trust for families of California.

19 SENATOR ASHBURN: Mr. President, just in
20 response, I don't -- I mean, there's no way that any of us can
21 assume the position of the Governor in his decision with respect
22 to nominees.

23 I mean, to hold this nominee responsible for any
24 of us who have the privilege of serving in judgment for this
25 appointment, confirmation, you know, is just beyond our powers
26 and authority. The Governor did what he did. It's his
27 responsibility for his own actions.

28 All I'm saying is, let's be fair to this

1 individual who has clearly explained why she did what she did.
2 And it was not on the merit or lack of merit of the particular
3 issue. It was simply her sincere belief that it was beyond the
4 purview of that position to be expressing a policy position.

5 The fact that it was misinterpreted, that the
6 Governor did other things subsequent to that, is totally
7 irrelevant to her qualifications and the sincerity with which
8 she rendered her decision.

9 CHAIRMAN PERATA: I find this all very
10 fascinating. And I must say that it has spawned thoughts and
11 questions that I didn't have when I sat down.

12 I do think whatever the interpretation we might
13 have for the Governor's action with regard to the other four is
14 probably a very valid question that should be asked of the
15 Governor because I think it's relevant.

16 It really goes to a much broader issue that's
17 underway right now in this state, at least in this building.
18 And that is sort of a summary decision that we should make
19 regarding the difference between a long-held tradition of this
20 state for public employees of defined benefits, and now a
21 radical departure from that based upon, not on the tradition,
22 and based much more on factors that, frankly, the administration
23 has failed to document before any number of committees.

24 But the concern I have of all of this, and this
25 is the most timely opportunity that we've had to discuss this,
26 is that the way we are talking about public pensions diminishes
27 greatly the value of public service, in my judgment.

28 Unlike those who would have citizen politicians

1 spend five or six years in the Legislature then return to the
2 farm and go back to the plow, teachers, public employees
3 generally, willfully and with great foresight go into public
4 service to teach as a chosen vocation.

5 And I find it odious to compare those in the
6 teaching profession, or frankly, anybody that serves on a school
7 site or in a school district, or in any way performs a function
8 within our school system, comparing them to the private sector;
9 that somehow if you work for World Com, as tragic as that was,
10 that that would be the same thing; we should be treating them
11 the same way we treat teachers.

12 You go into teaching, you go into public service
13 knowing two things: You're never going to get rich, and you're
14 never going to retire with great luxury.

15 But one of the things that we have traditionally
16 offered our public employees is the certitude that the money
17 that is invested by them and by the system will be there for
18 them in the years after public service.

19 And I think we are throwing around terms, and
20 ideas, and comparisons that are very dangerous for this system.
21 There are two-thirds of the managers of the State of California
22 right now that are at retirement age; two-thirds. Now, maybe
23 there are people around here who believe that the State of
24 California can operate without experienced managers. If so, you
25 have a very low opinion of the government.

26 But why in the world would anybody today
27 graduating from college, or even high school, seek out public
28 employment when there seems to be so little regard for public

1 service?

2 We are the ones that punctuate the value of that,
3 those of us sitting here. And this goes well beyond the scope
4 of this hearing or this nominee, but it's damn important because
5 there's a trend being set here, or being promoted here in this
6 state, that is not part of the trend that I want to be part of.
7 It is not part of the tradition of this state. It is not why I
8 went into teaching. And it's not why all the people testifying
9 here, who are representing tens of hundreds of thousands of
10 individuals, believe that it's important.

11 So, I do think it's a very fair question to ask
12 the Governor, why his action -- and, you know, it's ironic that
13 I haven't asked him. I didn't even think about it before today,
14 why not to ask, "What did you have in mind? Why were these four
15 summarily dismissed, and we are to be passing a green light on
16 the one you left?"

17 It would appear to me, Ms. Smalley, that you are
18 here because you did something consistent with what the Governor
19 wanted. In fact, he got a result from you that he didn't get
20 from others, which would seem to support the fact that we are
21 acting in not only a fiduciary but in a political manner.

22 So, I'm going to put this matter over until we
23 return from vacation because I intend to ask the Governor
24 exactly why this happened. I think it's fair to him for him to
25 have a conversation with me. I think it's fair to him to have
26 his opportunity expressed here because there is too much being
27 assumed in too many things that we're doing right now.

28 Throwing something on the ballot and saying that

1 this is the best course for the future of this state is not why
2 we have a deliberative legislative process. It diminishes all
3 of us, Republicans or Democrats.

4 So, with your forbearance, Ms. Smalley, I would
5 like to put over any further activity on your confirmation until
6 we get back, until I have an opportunity of giving the Governor
7 the benefit of a discussion about this, and frankly, where I can
8 have a little conversation with him directly about what it is
9 that we are talking about with regard to public service, not
10 only teachers, but anyone who gives their life over to serving
11 their fellow residents and citizens of this state.

12 So, I thank you for being here, and I invite you
13 back.

14 MS. SMALLEY: Certainly. Thank you for the
15 opportunity to talk to you this afternoon.

16 CHAIRMAN PERATA: Thank you.

17 [Thereupon this portion of the
18 Senate Rules Committee hearing
19 was terminated at approximately
20 3:42 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

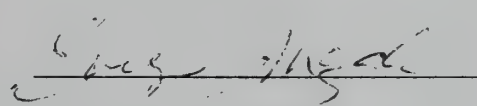
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

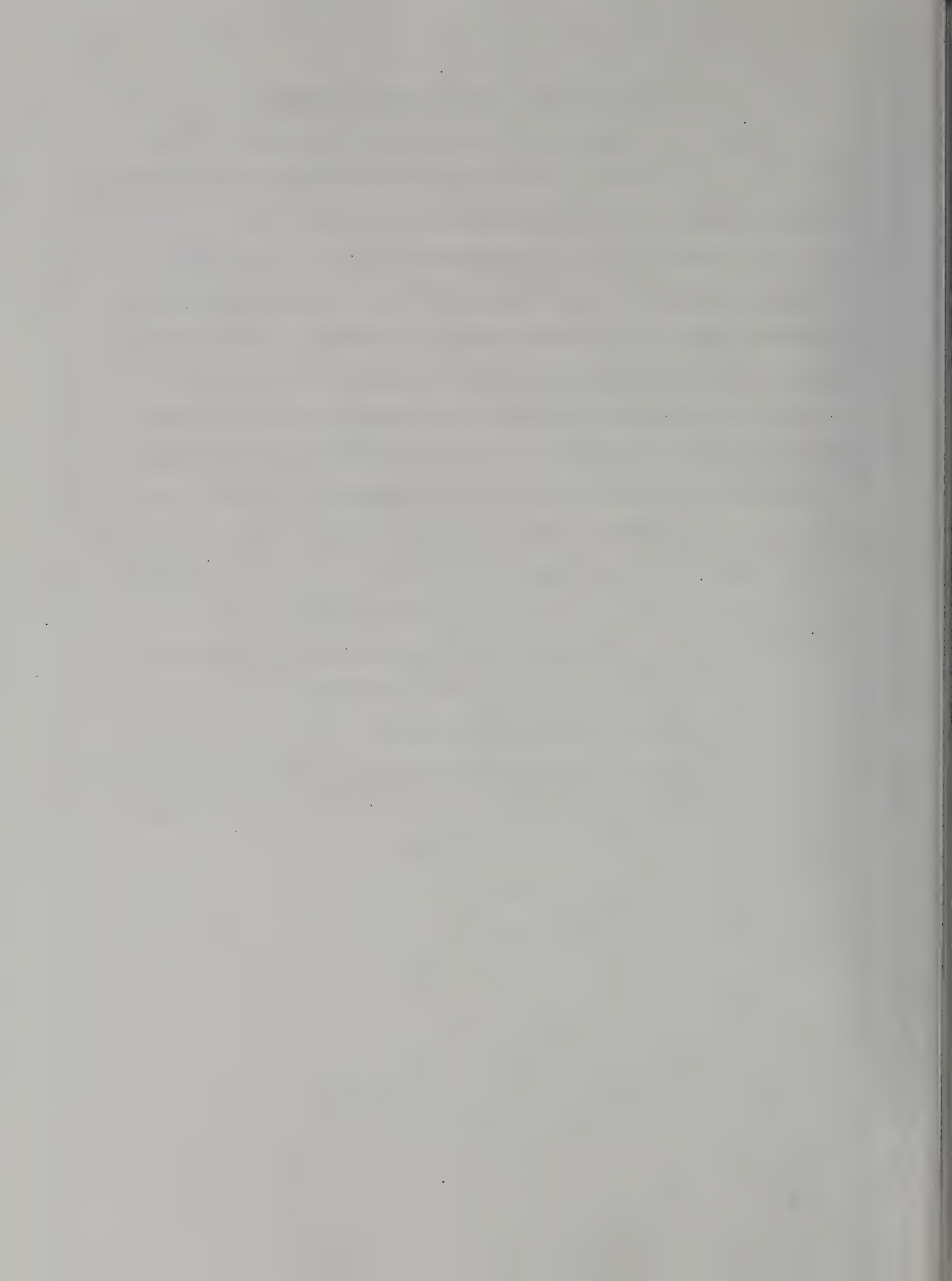
That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

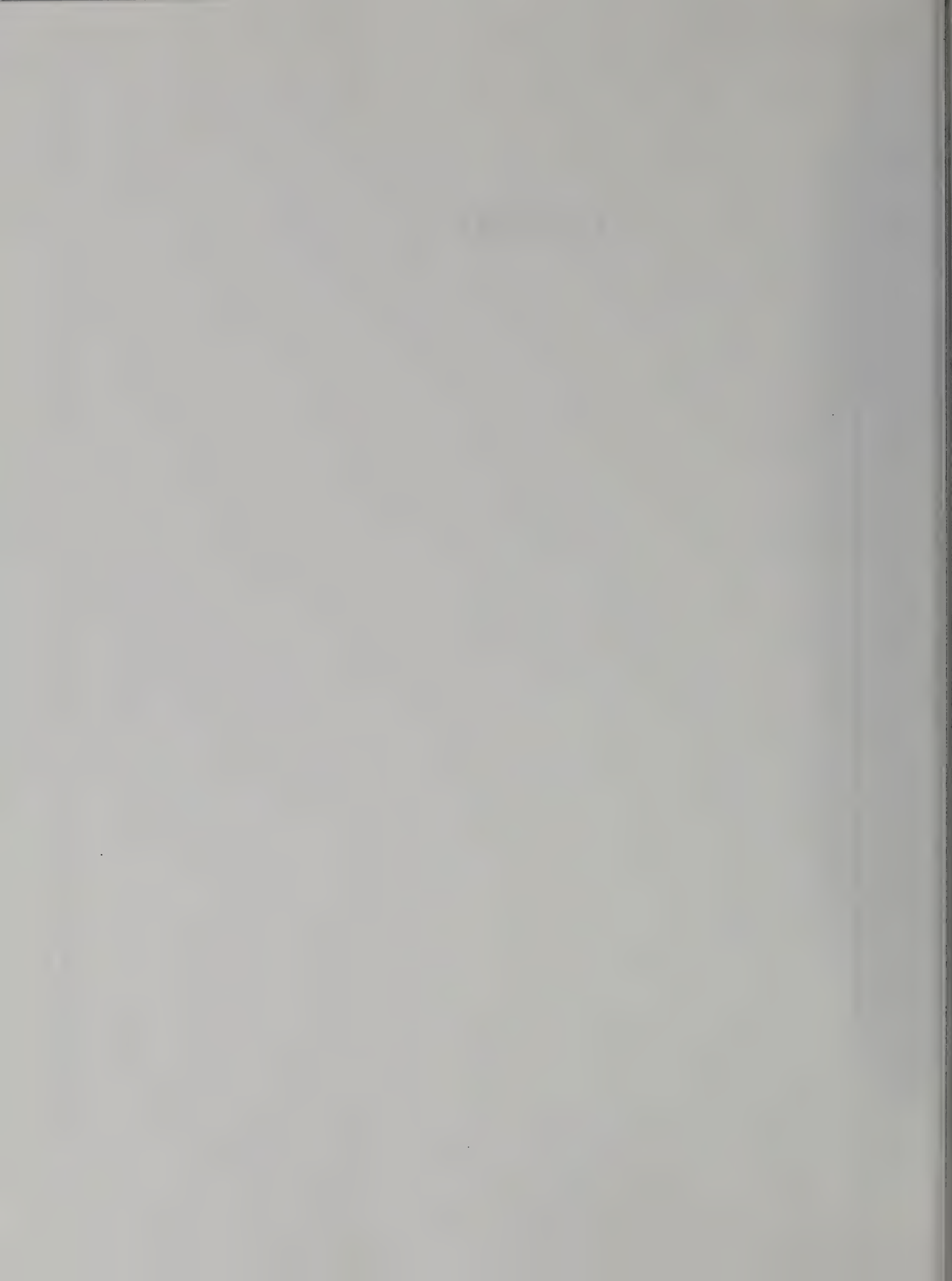
24th day of March, 2005.


EVELYN J. MIZAK
Shorthand Reporter



APPENDIX

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1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as Secretary of State?

Voting is the very foundation of our democracy. Our schools, our roads, and our civic society are directly tied to the orderly exercise of the right to vote. It is my belief that we must achieve two parallel, but equally important objectives in the Secretary of State's office. 1) We must ensure an educated electorate that has confidence in the integrity of the voting process. If you are a registered voter and you lawfully cast a vote in an election, that vote must be counted accurately and efficiently. 2) To have a truly representative society and a government that reflects the needs and will of its citizens, we must aggressively reach all Californians who are eligible to participate in the electoral process. We must aggressively seek to register those who are not currently on the voter rolls and reach out to all registered voters to cast a ballot.

And we must prepare our youth who will shortly become eligible to vote and our recent immigrants who will shortly become citizens about how they can register to vote and become full participants in our democratic process.

I have consulted with our front line elections officials throughout California's counties. They are extremely pleased that the turnout in the last Presidential election was 76%. But we can do better. Further, of the estimated 22,075,036 Californians eligible to vote, only 16,557,273 are registered to vote. That is a number that must increase.

As the outreach effort moves forward, the most pressing needs are to:

- Re-invigorate and re-establish the relationship between the real front-line professionals - the county election officials and the Secretary of State.
- Restore confidence in the Secretary of State's office with federal election officials and Congress to continue the vital flow of federal resources and dollars to California.
- Ensure the confidence of the voters in the fairness and reliability of the voting systems and procedures that make our democracy a reality.

2. Pursuant to the Help America Vote Act (HAVA), California is required to meet certain implementation guidelines by January 1, 2006. One of these mandates is the creation and implementation of a Statewide Voter Registration database.

California currently uses the Calvoter system to track registration within the state. Initially, the Secretary of State's office contemplated the purchase and acquisition of an entirely new statewide voter registration database but subsequently announced that it would instead upgrade Calvoter to meet all the HAVA requirements.

Do you support the creation of a new statewide voter registration database or do you believe it is possible, and prudent, to upgrade the existing Calvoter system to comply with the HAVA mandate? How would your administration ensure that California's new statewide database is tested and in place by the January 1, 2006 deadline?

I am going to review the status of the statewide voter database with the expert staff of the Secretary of State's office, the county elections officials of California, and the relevant federal officials. I pledge to the people of California that we will have a statewide voter registration database that complies with HAVA.

3. HAVA requires that provisional ballots be made available to voters at each polling place. Given this federal mandate, and your opposition to Assembly Bill 190 (Levine), Chapter 808, Statutes of 2003, do you support counting the ballots of all provisional voters for every race where a voter is entitled to vote as the bill required?

Provisional ballots are an important tool to improve voter participation in California and we've used them successfully years before HAVA. I am very much in favor of HAVA's additional provisional ballot requirement of "free access". This means that an individual who casts a provisional ballot is able to discover whether or not their ballot was actually counted and if not, the reason why it wasn't. These requirements were extended to all California elections, not just federal by an amendment to our election laws. California began complying in the March 2004 election. My goal is to ensure that provisional ballots increase voter participation, decrease voter confusion, and contribute to accurate, reliable, and efficient election administration.

4. HAVA requires states to conduct voter outreach programs and provides funding for that purpose. Please describe your views of appropriate voter outreach to inform under-represented communities of their rights and responsibilities to participate in the electoral process.

The Secretary of State is California's Chief Election Official. As I stated in my overall philosophy and goals of what I hope to achieve as Secretary of State, I am committed to increasing the numbers of registered voters in rural, urban, and under-represented communities. HAVA's requirement for this outreach is vital and the letter and spirit of a vigorous voter outreach effort led by the Secretary of State is critically important.

It is my intention to work closely with local election officials and community based organizations that are in the best position to understand the needs and requirements of the local electorate to implement HAVA's voter outreach requirements. I intend to ensure that this implementation is broad based, nonpartisan, and diverse.

5. In 2003, the Secretary of State's office created the HAVA State Plan Advisory Committee which included 24 public officials and public-interest members. What is your view on the appropriate input from the Commission? What steps would your administration take to include the Committee and its recommendations in furthering HAVA through voter outreach, poll worker training, election official education, and the Statewide Voter Registration Database?

The Advisory Committee was helpful to understand the needs of the state's millions of voters during the construction of the State Plan under HAVA. I hope to work closely with those who served on the Advisory Committee as well as a broad range of interested Californians as we aggressively move forward toward full compliance with the goals of HAVA. All voices need to be at the table. One of the important developments since the State Plan was put together is the formation of a HAVA 301/AVVPAT (Accessible Voter Verified Paper Audit Trail) Task Force made up of 21 county election officials and 9 community representatives. Cooperation and consultation with community representatives, election officials, and the Secretary of State is the only way to provide for an equitable, fair, and impartial handling of the funds California is entitled to under HAVA.

6. In the March, 2004 Primarily Election, some counties experienced difficulties with their Direct Recording Electronic (DRE) voting machines. Thereafter, the Secretary of State issued a regulation mandating Accessible Voter Verified Paper Audit Trails (AVVPAT) for any new DREs used in California. You were a co-author of Senate Bill 1438 (Johnson and Perata) Chapter 814, Statutes of 2004, which requires that all DREs used in California be equipped with an AVVPAT no later than January 1, 2006. Do you continue to support the state's mandates of AVVPATs?

Yes. I strongly support measures that strengthen voter confidence in the electoral process. The goal and purpose of SB 1438 was to ensure that a voter could cast a vote and check on the accuracy of that vote. The biggest challenges confronting the election process in California are technological and fiscal. But, you can't put a price on democracy. The recent successful election experience in Nevada indicates that any technical problems in California with an accessible voter verified paper audit trail can be worked out in consultation with our election officials and community representatives of the disabled and those facing language barriers.

7. The Elections Code requires employers to post notices regarding their employees' right to time off to vote on Election Day. Given this requirement is largely ignored, what would you do to encourage compliance and enforce the law?

I see this as an outreach and education effort. As Secretary of State, I am going work with both the public and private sectors to make sure that everyone understands the rights of a voter on Election Day. Employers need to give their employees time off to vote and employees need to inform their employers that they will be taking the time off to exercise their fundamental right to vote.

The information about voting should be available as widely as possible, for example in the Voter Pamphlet, websites, sample ballots. We should also remember, in our outreach efforts, that voting in California extends beyond our borders to overseas military and civilian voters. The Secretary of State can harness the creative and innovative talents of Californians to find ways to broadly inform voters and employers about their rights and responsibilities.

8. The Department of Motor Vehicles currently implements portions of the National Voter Registration Act of 1993 (the federal "motor voter" law) pursuant to a court settlement because then-Governor Wilson refused to obey the federal mandate. Now, instead of a single form serving as both a driver's license application and voter registration affidavit as federal law requires, Californians are provided a separate voter registration form. Would you support an effort to require the DMV to comply with the letter of the federal motor voter law by using a single form?

NVRA or Motor Voter is a valuable tool to register millions of voters who might otherwise not be registered. One of the primary goals of Motor Voter was to create a seamless, convenient method for registering voters. The problem is that the needs of the DMV and county elections officials do not match when it comes to collecting information from their clients. A single form in California might create voter confusion because of its length and complexity. That is why I support projects like online voter registration, which is consistent with NVRA's important goal of broadening the availability of registration. Working with DMV and California's election officials we can also explore, for example, the possibility of allowing election officials to accept digitized signatures from DMV. Election officials could receive a complete form electronically from DMV.

9. San Francisco recently conducted the first instant run-off, or ranked choice, election in California history. Given its apparent success, would you support an effort to extend the option of using instant run-off voting systems in other jurisdictions?

The Secretary of State's Office appropriate role is to work with local jurisdictions to deploy voting systems that maintain the integrity of the voting process and meet local desires. IRV was restricted to local elections in San Francisco. Local elections officials should be given the flexibility to respond to local desires. The Secretary of State ensures the accuracy, reliability, fairness, and uniformity of the voting systems chosen by local jurisdictions.

10. Former Secretary of State Shelley was criticized for using federal HAVA funds for what were described as partisan purposes. What steps will you take to ensure that the officers and employees of the Secretary of State's office do not conduct themselves in a partisan manner?

The Secretary of State must be accountable and impartial in the administration of the election process. I support full disclosure, full accounting, and appropriate steps to ensure that only nonpartisan activities are carried out through all programs at the Secretary of State's Office. I will make certain that every officer and employee is fully informed that they cannot engage in activities incompatible with their public trust. Furthermore, HAVA's implementation from now on will be transparent, businesslike, and accessible.

11. On more than one occasion, you have voted to support legislation to require voters to show identification when attempting to vote at their polling place on Election Day. As Secretary of State, would you continue to support such legislation?

HAVA sets out identification requirements for first-time voters. As Secretary of State I am going to make sure that there are fully transparent procedures everyone knows to implement the federal identification requirements.

12. On more than one occasion, you have voted to oppose legislation expanding the universe of voters permitted to apply for permanent absentee voter status yet you authored legislation to increase the use of all-mail ballot elections. What is your philosophy regarding the use of all-mail or absentee ballots and how do you explain this apparent contradiction in your legislative record?

I supported all-mail ballots on a limited basis in local elections where voter turnout was drastically low. We should closely examine whether this type of voting process can be expanded. But it is also critical that we maintain the integrity of the voting process by ensuring that our voter rolls are as clean and free of so-called deadwood as possible before undertaking expanded all-mail balloting. Those two conditions - for local-only election and local efforts to maintain a clean, accurate voter roll - were met by Monterey County, which was the subject of my legislation.

13. Pursuant to Assembly Bill 1094 (Hertzberg) Chapter 899, Statutes of 2000, the deadline to register to vote was shortened from 29 days to 15 days prior to an election. Given the fact that you opposed this legislation, what is your philosophy regarding access to voter participation and would you support an effort to enact some form of Election Day registration in California?

HAVA's requirement for a statewide voter registration database may provide California with the opportunity to put a same-day voter registration process in place. With the right technology we might be able to ensure that every voter gets the right ballot after registering on Election Day.

The problem with AB 1094 was that it truncated the registration process to 15 days, making it impossible for there to be an informed electorate, which is essential. AB 1094 specified that anyone registering after the 29th day may not receive a Voter Pamphlet or a sample ballot. Those elections materials give voters basic and important information about ballot issues that they need to make an informed decision. Same-day voter registration creates the same problem as AB 1094 - voters have to decide complex issues "on the spot" by looking at a voter guides and sample ballots.

14. The California Domestic Partner Rights and Responsibilities Act of 2003, enacted by Assembly Bill 205 (Goldberg), Chapter 421, Statutes of 2003, requires the Secretary of State to perform various duties relating to the registry of domestic partnerships. Given the fact that you opposed this legislation, what is your philosophy regarding the rights of same-sex couples and how will this affect your ability and willingness to fulfill the Secretary of State's responsibilities under the law?

As Secretary of State, I will impartially administer all the laws of California.

KATHLEEN SMALLEY

January 14, 2005

VIA FACSIMILE & U.S. MAIL
916-445-0596

The Honorable Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814-4900

Dear Chairman Perata:

Thank you for your letter of December 22, 2004, in which you asked several questions about matters likely to be discussed at the hearing on the confirmation of my appointment as a member of the Board of the California State Teachers' Retirement System (CalSTRS). I appreciate your interest, and I look forward to discussing these questions with you in person soon. In the meantime, I would like to offer the following responses to your questions:

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the Teachers' Retirement Board?* My overall goal is to serve the beneficiaries of CalSTRS and the state of California, by ensuring that the assets committed to the trust are managed in a way designed to provide both security and attractive returns, to enable CalSTRS to meet the obligations of the state of California to its public schoolteachers and their families. As a citizen of California, I recognize the overwhelming importance of the contribution of schoolteachers to our state, and the state must continue to provide attractive benefits to schoolteachers to motivate good people to teach and to continue in teaching careers. More specific goals will evolve as the circumstances of CalSTRS change. Clearly, the most important goal today is to resolve the unfunded liability of CalSTRS. To accomplish that goal, of course, we need to understand the future of the defined benefit program, which is the subject of pending proposals for significant changes, which will significantly affect the range of options available for resolving the unfunded liability. In addition, I hope that our Board will review the package of benefits currently offered schoolteachers with a goal of ensuring that, within the resources available to CalSTRS, we offer the most attractive package possible.

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2. *How are board members to evaluate independently the cost of various proposals to change benefit structure? What data is available to you as you evaluate the complex and often obscure models? One of the most important functions of Board members is to ensure that the advice we receive on many technically difficult questions is independent and competent. We engage consultants, and, although we call upon the staff of CalSTRS to assist in the process of engaging advisors, the consultants are selected by us and are retained to advise the Board. Consequently, there is a truly independent check on the advice provided by our own very capable professional staff. When we consider changes to benefit structure, we would engage our actuary (currently Milliman) to provide us with an estimate of the cost of any proposed change and meet with us to review in detail the preparation of the estimate. Further, the actuary's work is based on an experience study to determine the demographics of our beneficiary pool, and that experience study has been audited by two other actuaries. Finally, proposals to change benefit structure may create significant tax implications for our beneficiaries, which must also be evaluated as a cost of a change. These changes are evaluated by the staff of CalSTRS and by independent counsel and advisors.*
3. *The Teachers' Retirement Board has unfunded liability. A number of options for resolving this problem have been presented to the board. What issues and impacts do you believe should be considered and valued in developing ways to address the funding deficiency? This issue is one of the most difficult and clearly the most important of the issues currently facing the Board. We need to proceed deliberately, to be certain that we understand fully the impact of any proposed solution on all constituencies, including beneficiaries, future teachers, school districts, and the state. Therefore, we must be sure that we fully understand the scope of the problem, and the additional valuation study that we have commissioned will be helpful in that regard. We must avoid any temptation to undertake unduly risky investments to try to "invest our way out of the underfunding," which means that any solution almost certainly will include some combination of increased contributions (from the state, the school districts, or the teachers) and/or reduced benefits. Because each of the potential sources of additional contributions faces real budgetary issues currently, we will need to work cooperatively with the legislature, the school districts, and both active and retired teachers to determine a realistic package of contributions and benefits changes that shares the impact equitably.*

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Where proposed solutions involve reducing benefits, we should work toward solutions that affect beneficiaries equally, rather than focusing the cost on small groups. We should consider the intensity of the impact to any group of beneficiaries affected and the experience of other states in designing teachers' benefit plans.

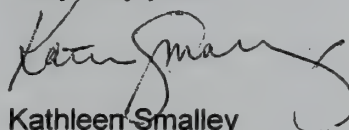
4. *In recent years, large public employee pension funds have positioned themselves to exert influence on the corporations in which they invest, in the belief that responsible corporate governance is essential to the safety of their investments. What are your views on the Teachers' Retirement Board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?* The Board's fiduciary responsibility is to maximize the value of the investments for the benefit of the beneficiaries of CalSTRS. Just as we would carefully evaluate the capabilities and governance procedures of a money manager with discretionary authority over CalSTRS funds, we should evaluate the capabilities and governance procedures of the corporations in which we invest. Moreover, because of our very significant investment in indexed funds (both internally and externally managed), we stand to benefit enormously from positive changes in the value of the publicly traded companies in which we invest – or to benefit from reductions in the risk that these corporations face. In addition, as long-term participants in the capital markets, we derive a benefit that is difficult to quantify but clearly important when markets become more transparent and more efficient, increasing the value of all investments in those markets. Consequently, it is an important part of our investment program and of the Board's fiduciary responsibility to engage in corporate governance issues. It is important, too, that we marshal our resources to engage in ways that maintain our credibility as a leader in corporate governance (a reputation that is itself an asset for the fund), that produce real results for our beneficiaries, and that are targeted at issues of with an impact on the value or the risk profile of our investments.
5. *What investment strategies should the Teachers' Retirement Board be using in today's market?* Probably the most important factor in determining the returns of the fund over time is the asset allocation, and the Board should regularly and critically evaluate that allocation. We must also constantly monitor the trade-off between risk and return in designing our allocation. Our strategies, given our size, the nature of the liabilities of the system, and the markets available to us, should

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continue to take advantage of broad diversification as a means of lowering risk and enhancing returns. We should also consider evolving asset classes, and, where return expectations justify the risk, add them to our investment portfolio, as the fund has done successfully in recent years. We should continue the strategies that have, this year, brought the fund's total assets to a record high of \$126 billion as of the most recent year-end.

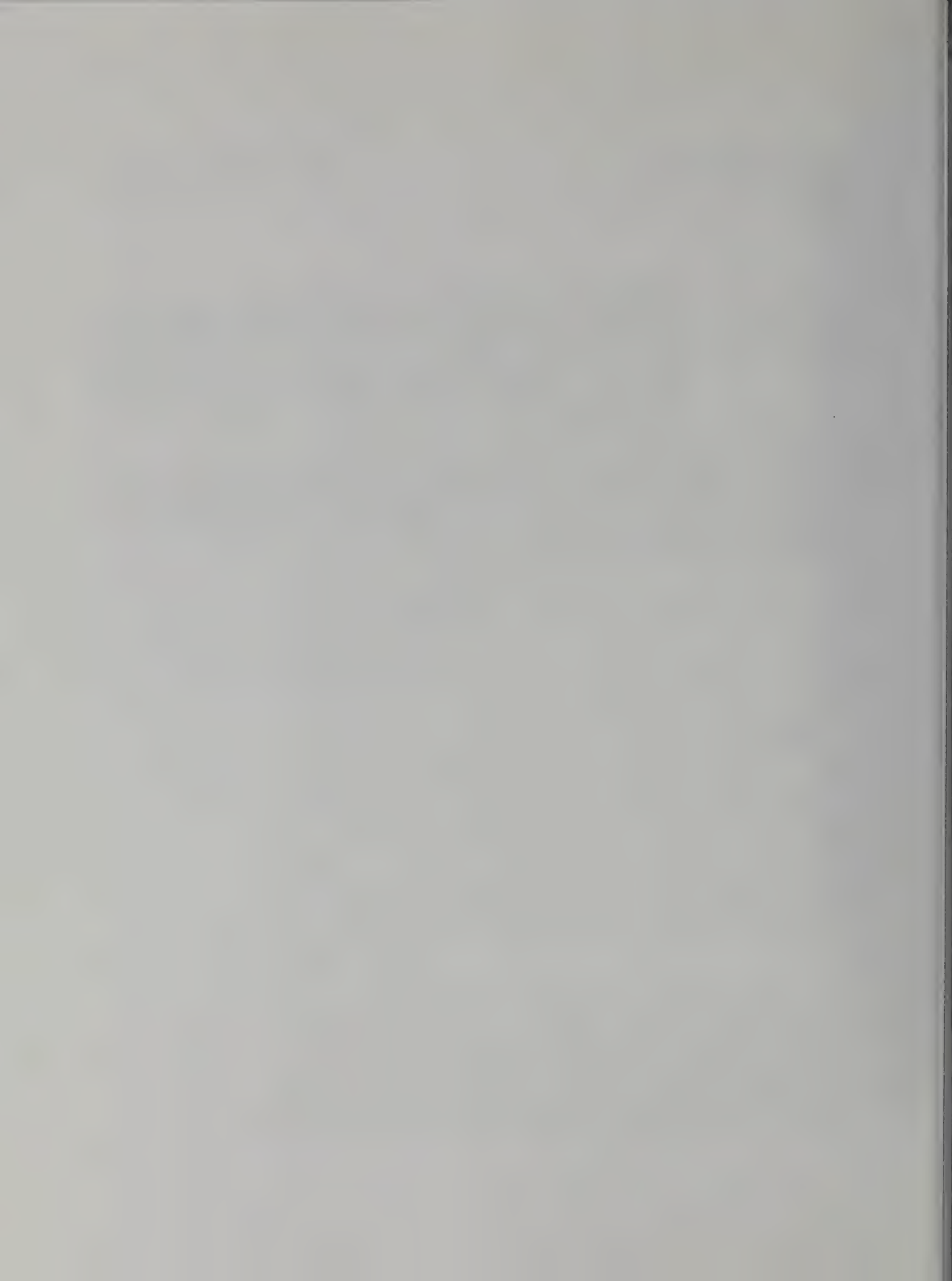
Thank you for this opportunity to address these questions. You have identified areas of significant concern in the management and direction of CalSTRS, and I look forward to discussing them with you in more detail at our upcoming meeting. In the meantime, if there is any further information that I can add that would be helpful, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Kathleen Smalley", with a stylized flourish at the end.

Kathleen Smalley

KS:ccm
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

MICHAEL T. NAVARRO, Director
Personnel Administration Department

SENATOR DEBORAH ORTIZA

LARRY DOLSON, Director
Operating Engineers, Unit 12

KEN MURCH
California Association of Psychiatric Technicians,
Bargaining Unit 18

JIM HARD, President
SEIU, Local 1000

1 WILLIAM A. AVRITT, Deputy Director
Personnel Administration Department

2 KENNETH W. CURTIS, Chief Counsel
3 Personnel Administration Department

4 LILIAN S. SHEK, Member
5 Public Employment Relations Board

6 DAVE LOW
California School Employees Association

7 MICHELLE CASTRO
8 Service Employees International Union

9 LIBBY SANCHEZ
10 SCOPE-Laborers' International Union of North America
11 IFPTE Local 21

12 ANGIE WEI
California Labor Federation, AFL-CIO

13 CHRISTY BOUMA
14 California Professional Firefighters

15 BARBARA O'HEARN, President
16 Women Lawyers of Sacramento

17 JOSHUA GOLKA
American Federation of State, County and Municipal Employees

18 DON NOVEY
19 Retired State Employee

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--ooOoo--

CHAIRMAN PERATA: Senator Ortiz.

SENATOR ORTIZ: Thank you.

CHAIRMAN PERATA: Senator, we are going to start as a subcommittee, in deference to your time.

SENATOR ORTIZ: Thank you, Mr. Chair and Members. I appreciate you accommodating my schedule.

I was invited to introduce a couple of the nominees, candidates, for the Committee today, and was honored to do so. I understand I'll just do my brief presentation, and you'll take it up later so I can go back and chair my committee.

Again, thank you again for allowing me to do some brief words.

I wanted to present to you two constituents of mine that are before your Committee confirmation process today. The first nominee is Michael Navarro, as Director of the Department of Personnel Administration, and the second is Lilian Shek, who is a nominee as a member of the Public Employees Relations Board.

Michael Navarro has, for over 30 years, served I think honorably in state service. A majority of that experience has been within the Department of Personnel Administration. He has served as the DPA Director since November of 2003, so he's been acting since a little over a year now.

He began his career as a staff analyst, working in the human resources management field in various state departments, and he focused on the development, implementation,

1 and the maintenance of state labor agency relations programs.
2 Mr. Navarro has held many positions within the Department of
3 Personnel Administration. He has served as a senior labor
4 relations officer, a principal labor relations officer, and as
5 Chief of the Classification and Compensation Division, as Chief
6 of the Labor Relations Division as well, and most recently as
7 the Department's Director.

8 He has dedicated his life to state service. I
9 continue to believe that's an honorable calling, and I don't
10 know that there's anyone else who's better fit to lead DPA than
11 someone who's spent 20 years within its ranks.

12 Mr. Navarro has said that he wants the DPA to be
13 a customer-oriented human resource organization, and he wants to
14 work with the various state agencies in helping them recruit and
15 retain qualified, enthusiastic individuals.

16 Mr. Navarro has also said that he wants to bring
17 more transparency to the collective bargaining process. I think
18 many of us can agree that that is a good thing.

19 I can think of no one who has as much extensive
20 experience as Mr. Navarro, and I believe that he'll be a
21 tremendous asset to the Department of Personnel Administration.

22 Therefore, I respectfully urge confirmation of
23 Mr. Navarro when he appears before the Committee today.

24 CHAIRMAN PERATA: Thank you.

25 SENATOR ORTIZ: The second nominee, Mr. Chair,
26 I've known Ms. Shek and her family for probably over 15 years
27 now. They live in the Sacramento Curtis Park neighborhood. I
28 was once the council representative of that neighborhood, and I

1 continue to be honored to serve as her Senator.

2 I believe Ms. Shek has exceptional
3 qualifications. She's got well-rounded experience that is
4 needed for this appointment. She has served as a member of the
5 Public Employment Relations Board since November of last year.
6 Prior to her current job, she served as an administrative law
7 judge for the Unemployment Insurance Appeals Board. This
8 experience, I believe, has given her considerable insight into
9 the operation and organization of quasi-judicial agencies such
10 as PERB.

11 Prior to serving as an administrative law judge,
12 she practiced law for 15 years. She's also taught various law
13 related courses at several universities. She's been long
14 involved in our community and numerous professional
15 organizations. She's the past President of the Women Lawyers of
16 Sacramento. She's a former board member of the Sacramento
17 Symphony, and an active advocate and marathon runner for the Why
18 Me National Breast Cancer Organization, and the
19 Leukemia-Lymphoma Society.

20 She's a first generation Asian American woman
21 with a diverse cultural background, and she reflects, I think,
22 the changing demographics of this great state. She speaks
23 Chinese and is probably even better in her Spanish fluency than
24 myself, which isn't saying a lot.

25 But I believe that Lilian, Ms. Shek, will make an
26 excellent member of the Public Employees Relations Board, and I
27 urge you to consider her nomination favorably, Mr. Chair.

28 CHAIRMAN PERATA: Thank you, Senator. Appreciate

1 you being here.

2 SENATOR ORTIZ: And thank you for allowing me the
3 time, unless there are questions.

4 CHAIRMAN PERATA: You may go back to your
5 committee.

6 SENATOR ORTIZ: Thank you so much.

7 So, Mr. Navarro.

8 We have a full complement of Members.

9 Mr. Navarro, please.

10 MR. NAVARRO: Thank you, Mr. Chair, Senators.
11 With your permission, I'd like to take a few minutes this
12 afternoon to summarize my qualifications for this position,
13 address what I consider to be some of the more significant
14 issues affecting human resources today in state government, and
15 maybe even touch a little bit on some of our accomplishments at
16 DPA over the past year. I promise to be brief.

17 In terms of my own background, as you heard
18 earlier, I've served the State of California for more than 30
19 years, beginning as an administrative trainee at the State
20 Personnel Board. I worked up through the ranks and had the good
21 fortune to serve in executive and have appointed positions with
22 four different administrations, counting the current one.

23 What I bring to this job as DPA Director is a
24 deep-seated respect for public service. I know first-hand that
25 state employment offers a challenging, exciting, and rewarding
26 career. No other employer offers so many opportunities in so
27 many different agencies, the opportunity to, in fact, change
28 careers and still work for the same employer. It's been a great

1 place.

2 I want to make sure that the state remains a
3 great career choice. However, it's going to require some work
4 on our part to recognize areas where we need to make changes.
5 In some cases, the need for change is a matter of fiscal
6 urgency. In other cases, we've allowed our personnel system to
7 fall into a state of disrepair, where reform is simply long over
8 due.

9 Given that change is difficult for any employer,
10 particularly one as large as the State of California, I expect
11 the next few years will be especially challenging for all of us.
12 Over the next few months the challenges include negotiating
13 contracts with 14 different bargaining units in state
14 government. Negotiations will be difficult, given the limited
15 resources that we have.

16 However, I believe that collective bargaining
17 isn't a tool to be used only when times are good. Arguably,
18 it's even more valuable when times are bad, and all the choices
19 that we have to make have potentially adverse impacts.
20 Collective bargaining, however, does offer an opportunity to the
21 parties to approach the table, to maintain services, and
22 maintain fairness for the workforce.

23 More specifically, we know that at some point in
24 time there may be a need to reduce payroll. Sometimes the state
25 simply cannot preserve all of its programs and services without
26 touching payroll. Currently, we have only two options: lay
27 offs or negotiated salary cuts. We think there needs to be a
28 third option, which is why we're proposing to allow the state to

1 use furloughs under certain fiscal circumstances. A furlough
2 program has the advantage of being less disruptive for the
3 employer and employee, and it also provides immediate cost
4 savings.

5 We're sponsoring legislation to get this option
6 into statute, and we've also proposed it to the unions as part
7 of the new -- new agreements.

8 And holidays, we're also proposing to reduce the
9 number of paid holidays by two. This would bring us more in
10 line with other employers and save money on the overtime we have
11 to pay for those employees who must work on those holidays.

12 We have other proposals. We're also seeking
13 union input on those proposals; everything from how to control
14 the accumulation of vacation leave, to how to control health
15 care expenditures so that those expenditures don't take as big a
16 bite out of the employees' pay check.

17 And I can't forget retirement. Retirement is the
18 on the table, and we're going to have a healthy discussion of
19 pension benefits.

20 I don't honestly know how that debate is going to
21 turn out, but I recognize that the volatility of employer
22 pension contributions and the current defined benefit
23 environment compels us to take a more pro-active approach.

24 My job of negotiating administration's policy in
25 this matter will perhaps be the most challenging part of my
26 career. I know how much this benefit has meant to me personally
27 and to my family.

28 But how can I, in good conscience, ignore the

1 public concerns that have been raised on this issue?

2 As DPA Director, I have a unique vantage point,
3 if you will. The position gives me a seat on the Cal PERS Board
4 with a fiduciary responsibility for billions of dollars for
5 thousands of members. The position also puts me at the helm of
6 the staff at DPA charged with, among other things, controlling
7 employer costs at the collective bargaining table.

8 I have to fulfill my fiduciary obligations as a
9 Cal PERS Board member while simultaneously protecting the
10 employer's management prerogatives, including the level and form
11 of compensation.

12 I have no illusions about the difficulties ahead.
13 This will require mutual respect for conflicting opinions and a
14 sincere desire to find solutions to seemingly impossible
15 problems, but I believe it can be done.

16 In spite of the challenges, we have had some
17 successes at DPA over the past year. We reached a new agreement
18 with the state's mental health workers, ending an 18-month long
19 bargaining stalemate. AB 1567, by Assemblyman Torrico, would
20 ratify that agreement.

21 Just recently, we concluded a significant
22 settlement agreement with the craft and maintenance workers that
23 relieves the state of paying a potential \$35 million award that
24 resulted from a series of adverse arbitration decisions. SB
25 1097, by Senator Dunn, is the bill that we're sponsoring to
26 obtain legislative approval for that measure.

27 We also successfully renegotiated contracts with
28 the Highway Patrol and the correctional officers, reducing the

1 cost of those contracts by \$140 million over two years.

2 Incidentally, the bill approving the renegotiated
3 MOU with the correctional officers was authored by Senator
4 Cedillo, so thank you, Senator, for your assistance.

5 We've also begun to deal with management
6 compensation. We've taken steps to begin addressing what I
7 think is a serious salary compaction problem affecting many of
8 the state's supervisory and managerial employees. The task
9 force created by statute to examine how the state sets
10 management salaries did a good job of beginning the process but
11 stopped short of identifying specific solutions to immediate
12 problems. We picked up where the task force left off, working
13 with a group of departmental representatives to identify
14 specific job classes where supervisors' salaries are less than 5
15 percent than their subordinates', prioritizing the salary
16 compaction problems, and drawing up a proposal to the Department
17 of Finance to begin addressing them.

18 I strongly believe that we must be proactive in
19 this area, and that managerial compensation should never be
20 simply an afterthought.

21 These are just a few of our accomplishments to
22 date, and we still have much to do. But I'm certain that the
23 team that we've assembled at DPA is up to the task.

24 In closing, I would like to reaffirm my personal
25 commitment and dedication to this position. At the end of the
26 day, I can only offer my integrity, and my experience, and my
27 assurance that under my watch, the state will always approach
28 the bargaining table with a sincere desire to find solutions to

1 the problems that both labor and management are going to face.

2 Thank you very much for your time and your
3 attention.

4 CHAIRMAN PERATA: Thank you, Director Navarro.
5 Well spoken.

6 You come here at a very propitious time for us,
7 maybe, not for you, but you'll be the judge of that.

8 I do think that you have one of the more critical
9 positions this year and the years to come. And because this
10 debate over public pensions has really been dominant the first
11 quarter of this session, there has been a general concern, a
12 broader concern that has arisen, and that basically is over the
13 future of public service. And there, unfortunately, has been
14 amid the discussions about pensions, there's been slipping in
15 there sort of an inherent sense of the worthiness of public
16 employees, and whether or not they are in fact doing a job.

17 I note from your biography that this is your
18 career. You've come up through the ranks. And I'm interested,
19 and actually this question I will ask of the other two members
20 who are being confirmed, why did you come into state government?
21 And why did you stay?

22 MR. NAVARRO: I probably fell into this job, more
23 than anything else. I was attracted by the work as it was
24 described to me some 33 years ago.

25 What I said earlier, I think, has always been
26 very important to me. I've been able to work in a multiple
27 number of state agencies. Most of my career has found me in the
28 HR world, either in labor negotiations or managing a personnel

1 office.

2 But just the flexibility that state government
3 offers, the ability to go from one agency to another, the
4 ability to actually change a career, if I had so desired. I
5 think that's a very attractive feature. And quite frankly, I
6 don't think that it's a feature that we do a very good job in
7 terms of selling to future employees of the State of
8 California. We offer so many possibilities and so many options,
9 and we just don't sell that point.

10 CHAIRMAN PERATA: Thank you.

11 And I appreciated at the opening your comments
12 about the respect for public service, because someone in your
13 position, I think that's probably the most crucial from my point
14 of view, the most crucial quality. If you revere something, you
15 tend to administer in that fashion.

16 I'd like to ask a couple questions about
17 training. Did you through out this course have any in-service
18 formal training, or did you have to seek courses or instruction
19 outside? How does that work? How did it work in your career?

20 MR. NAVARRO: In my career it worked both ways.
21 Early in my career I wanted to learn a little bit more about
22 statistics for examination purposes for personnel management
23 purposes, so I took a couple of courses at a local community
24 college. Actually, with the assistance of state government,
25 they funded half the cost.

26 And throughout my career, I've also had an
27 opportunity to take courses offered at that time through the
28 State Personnel Board. So, it's really been both.

1 CHAIRMAN PERATA: Do we still offer those
2 courses?

3 MR. NAVARRO: We don't offer courses through the
4 State Training Center because the State Training Center, as you
5 may or may not know, was part of the Department of Personnel
6 Administration, and few months ago I had to make a very
7 difficult decision, and that was to close down the State
8 Training Center.

9 That decision was made not because of any policy
10 concerns. I continue to believe training is a very important
11 part of any HR program, especially for this state. However, the
12 State Training Center derives its income from the students that
13 enroll, and we were seeing a decline in the student population,
14 which I understand because other departments are being hard
15 pressed to make their budgets. So, we found that we just could
16 not support the Training Center anymore, so I had to make the
17 decision to close it down.

18 Fortunately, we've been able to partner with CSU,
19 their training operation, with the Cooperative Personnel
20 Services, CPS, who also offer an extensive array of training
21 courses. In fact, both those organizations really picked up the
22 baton and ran with a lot of the courses that we were offering.
23 So fortunately, they've been able to fill in the gap.

24 But I hope someday in the not too distant future
25 to re-establish the State Training Center. I think it's a
26 valuable function.

27 CHAIRMAN PERATA: Are people in the management
28 ranks encouraged or selected to go off and take courses? How

1 does that work? How do you take a bright star and shine it up?

2 MR. NAVARRO: Again, I think you're going to find
3 different approaches, depending on the agency, depending on the
4 occupation.

5 I think we need to do more of that.

6 CHAIRMAN PERATA: It's a management prerogative?

7 MR. NAVARRO: Yes, supervisors have a lot of
8 discretion. And I think what we're going to find more and more
9 is a need to grow our own, if you will.

10 There's program out there that the psychiatric
11 technicians or the RNs can talk about. We call it the 20-20
12 program, where individuals get paid full-time, work 20 hours a
13 week, and go to school 20 hours a week. And then, at the end of
14 that program, they're fully licensed to perform in a new
15 occupation, and, of course, we get to keep them as employees.

16 We may find we have to do more of that in the
17 future.

18 CHAIRMAN PERATA: As for one guy, I would
19 encourage you to do that.

20 We have been told, and you probably -- well, I'm
21 sure you know -- that as high as 60 percent of our management in
22 the state is approaching or at retirement age.

23 MR. NAVARRO: If the latest stat I saw -- you're
24 familiar with the CEA category. That's our top managerial
25 structure in state government. Two-thirds of those individuals
26 are of retirement age today, 50 or more.

27 So yes, succession planning also has to be on our
28 plate. Somebody has to fill those shoes in the future.

1 CHAIRMAN PERATA: Are you actively doing that?
2 That's a pretty substantial number. Wake up one morning and no
3 one's there.

4 MR. NAVARRO: That's -- we look around this room
5 even within our DPA, within our own structure, a lot of gray
6 hair, what little is left.

7 CHAIRMAN PERATA: Don't start on that.

8 [Laughter.]

9 CHAIRMAN PERATA: This is really more than a
10 rhetorical concern, because I believe that some of the things
11 that you led with were, you know, lay-offs, negotiated cuts,
12 furloughs, cutting back on holidays, all in reviewing new ways
13 of doing retirement.

14 As value-free statement, those are all things, it
15 seems to me, people who have come up through the ranks, and have
16 had that as part of their state service package, may find it
17 less attractive in the future to continue. Not so much the
18 retirement people, they're vested, but the work environment and
19 the general attitude.

20 So, I know how important management is. They who
21 manage also serve.

22 So, I'd be real interested, as your tenure goes
23 along, just periodically being updated on that. I have no idea
24 about any of this stuff. It's a huge system. I know that.
25 Thank God people like you are willing to do it.

26 But I know that unlike baseball -- bad example.
27 We're not talking about steroids here -- you really have to rely
28 on your farm system because you can't go to the free agency

1 market if they have a more attractive package out there. And I
2 guess you can trade people if you got down the road.

3 But basically, public service is best served, I
4 believe, as you've said, by just bringing people up. So being
5 required to shed some of the essential things that I think help
6 produce that, it's always a shame that we see training as the
7 first thing to go. If you can replicate that with other,
8 community colleges and all that, I think that's fine.

9 But I would just urge you, as you go along with
10 that, and I will not see it as complaining. I mean, I would
11 just like an assessment as a professional, what toll is being
12 taken right now, because I do know from my own personal
13 experiences, my political experiences over last three months in
14 particular, there has been sort of a bulls-eye put on public
15 employment. You know better and so do I, but I think that
16 that's something that we have to work at.

17 You're really the gate keeper. Guys like me come
18 and go, but obviously, you've got great staying power.

19 MR. NAVARRO: Well, 33 years later, yes, I'm
20 still here.

21 CHAIRMAN PERATA: I have one final question.

22 I didn't know what this meant until recently, and
23 maybe everybody else does, but salary compaction. What is that?
24 How is that affecting things today?

25 MR. NAVARRO: In its simplest terms?

26 CHAIRMAN PERATA: Please.

27 MR. NAVARRO: Where the difference between the
28 worker and the supervisor becomes so minuscule that there's no

1 longer an incentive to promote.

2 I mean, what's -- what's the ideal differential?
3 I don't know. Some -- for a long time, state government has
4 argued that the rule of thumb should be something on the order
5 of 10 percent between levels. There's nothing magical about
6 that. It's something that we strive for.

7 Do we in fact have compaction today? Absolutely,
8 Senator, in any number of different occupations.

9 Have we in fact created a disincentive to
10 promote? Yes, we have.

11 That's why I'm saying we can't allow managerial
12 and supervisory compensation to become an afterthought. We've
13 tended to negotiate the labor agreements, deal with the rank and
14 file, and oh, yeah, we've got 35,000 managers and supervisors
15 out there that we have to do something else with. Okay, let's
16 pass along a few crumbs to them. Bad way of doing business.

17 CHAIRMAN PERATA: You have 35,000 of these
18 people?

19 MR. NAVARRO: We have 35,000 of these people.

20 CHAIRMAN PERATA: A couple of examples were cited
21 as, if you were in the prison system, the difference between a
22 deputy warden and a warden; in the Highway Patrol, between a
23 captain or a commander.

24 Those are serious public services.

25 MR. NAVARRO: Yes.

26 If I may comment, too. I think when it comes to
27 managers and supervisors, I think, quite frankly, we have to be
28 a little bit more creative than we have in the past. We have a

1 tendency -- again, we work in a somewhat of a structured
2 environment. And I think we have a tendency to say, "Well,
3 let's just throw more money into the base."

4 I still am very interested, and I've been a
5 long-time proponent of things like a cafeteria-style approach to
6 compensation, where yes, there's a base salary. But when it
7 comes to, say, the fringe benefits, individual managers and
8 supervisors are given a pot of money and a menu from which to
9 pick from. Your particular needs might be different than my
10 needs. You might choose to put that money into health benefits.
11 I might choose to put it into 401(K).

12 I think that kind of creativity we need to really
13 sponsor and do more of in state government. We've tended to be
14 somewhat restricted in our thinking, in my view.

15 CHAIRMAN PERATA: Your view matters a lot.
16 That's why you're here.

17 How well you do is whether or not we call the
18 next two people up.

19 [Laughter.]

20 CHAIRMAN PERATA: Members, questions? Senator
21 Bowen.

22 SENATOR BOWEN: Thank you.

23 A couple of questions. There are, I believe,
24 seven expired MOUs, and seven others that expire on June 30th?

25 MR. NAVARRO: Correct. We'll have a total of 14
26 contracts to deal with over the next few months.

27 SENATOR BOWEN: So, how are you doing?

28 MR. NAVARRO: How are we doing? Trying to get to

1 the bargaining table. No successes to report yet.

2 All kidding aside, Senator, it's pretty early in
3 the process.

4 SENATOR BOWEN: For expired MOUs?

5 MR. NAVARRO: Oh, I'll leave my -- I'll go back
6 to my earlier remark, no successes yet. We've been meeting.

7 SENATOR BOWEN: I think one of the reasons that I
8 ask is that what this means is that, at some point, we're going
9 to see 14 bills that contain Memoranda of Understanding.

10 One of the frustrations that the Legislature has
11 had is that very often, they're dropped on our desks with, if
12 we're lucky, a few hours of review time. Sometimes that's
13 generous.

14 Is there anything you can do about that?

15 MR. NAVARRO: You know, unfortunately, human
16 nature is such that everybody needs a deadline.

17 SENATOR BOWEN: You will notice that Senator
18 Ashburn and I got here at 1:29, and I do understand the concept.

19 MR. NAVARRO: Whether there's a deadline that is
20 in statute or a deadline that's mutually perceived by all
21 parties at the table, whatever that deadline is, is the deadline
22 that we tend to work around.

23 I suppose we, you know, we could introduce
24 legislation that says that all contracts must be presented to
25 the Legislature by a fixed date. That might be an option.

26 SENATOR BOWEN: We have legislation that requires
27 us to complete a budget by a particular date.

28 MR. NAVARRO: I don't have a good answer for you.

1 SENATOR BOWEN: Use that as a model, perhaps.

2 MR. NAVARRO: I don't have a good answer for
3 you.

4 But let me comment. The one commitment I will
5 make to you and to all the Members of the Legislature, I
6 mentioned in my written responses that one of my commitments to
7 you is one of transparency. I have no intention of making any
8 secret deals whatsoever. If we do a deal, it has to be able to
9 stand the light of day.

10 And I want to get those agreements over to the
11 Legislature in sufficient time and sufficient detail to allow
12 you to make an informed decision as far as what's contained in
13 there.

14 But I don't have any secret answer to the
15 deadline.

16 SENATOR BOWEN: Perhaps just being more aware of
17 the concern. Sometimes it's had disastrous consequences.

18 The Governor's budget assumes, I believe, \$741
19 million in savings, of which 408 million is general fund savings
20 from the renegotiation of expired contracts.

21 Do you believe that's a realistic figure?

22 MR. NAVARRO: You're asking an old labor
23 negotiator to do math.

24 That's a goal, and that's a goal that we're going
25 to try to reach in these negotiated agreements, Senator. It's a
26 goal, and we have a long ways to go.

27 And irrespective of how far apart the parties
28 start the process, if we engage in the process in good faith, we

1 can usually find some accord.

2 SENATOR BOWEN: I believe that a great deal of
3 that savings is supposed to come from requiring employees to pay
4 a larger share of their retirement costs; is that correct?

5 MR. NAVARRO: That's correct. That's part of
6 it.

7 SENATOR BOWEN: So, do you see any progress being
8 made in negotiating that issue?

9 I don't see a lot of progress in the Legislature
10 or ballot box. The only three ways to do it are legislatively,
11 at the ballot box, or by an agreement.

12 MR. NAVARRO: I was very serious, what I said
13 earlier in my remarks, about pension reform, or the DB-DC debate
14 is probably the most challenging problem that I've had to face
15 in 30-some years of government work.

16 I don't know where it's going to end up. I
17 really don't. We'll have to play it out, and we have to engage
18 in the process and come up with some options that both sides of
19 the table can live with.

20 SENATOR BOWEN: One of the ongoing discussions
21 I've had, I think productively but with no conclusion, with the
22 Director of Finance has to do with the impact on female
23 employees of moving from a defined benefit to a defined
24 contribution plan. The problem being that if you and I worked,
25 both of us, 33 years and then retired, actually I would have no
26 retirement plan and you would have a plan because the
27 Legislature doesn't have a retirement plan.

28 But assuming that I were any other state employee

1 other than a Legislator, we would have an equivalent amount of
2 money put away, assuming equality in our decisions about where
3 to invest things. But my life expectancy would be 4.3 years
4 longer than yours at the date of retirement, which means the
5 same amount of money has to go 4.3 years longer, or I have to
6 make a choice that could potentially put me at risk of outliving
7 my benefits entirely.

8 You obviously have a great many female employees,
9 I suspect, at the workforce in the state as a whole. Well, I
10 don't know actually statistically.

11 But I'd like to hear your take on that. I'm very
12 concerned that we're going to, if we move forward in this way,
13 create an enormous problem for women. And although life
14 expectancies are getting longer for both genders, that gap
15 doesn't seem to change, no matter how much more we start smoking
16 and doing all those kinds of things.

17 [Laughter.]

18 MR. NAVARRO: And in your example, you're
19 assuming life under a DC plan; is that the question?

20 SENATOR BOWEN: That's correct.

21 MR. NAVARRO: Admittedly, under a DB plan, it's a
22 non-issue. You're guaranteed that -- that benefit for life.

23 SENATOR BOWEN: Correct.

24 MR. NAVARRO: It -- it is a concern. And I guess
25 it kind of changes how you plan and your investment strategy.

26 Admittedly, if you believe in statistics, and you
27 believe in the law of averages, the female worker is going to
28 have to plan on a longer life expectancy and stretch out

1 whatever accrued savings she might have.

2 SENATOR BOWEN: Does that seem fair to you?

3 MR. NAVARRO: I think it requires more planning.

4 I don't know if it's an issue of fairness. I
5 think it requires more planning early on in the career.

6 SENATOR BOWEN: Again, I would ask you, does it
7 seem fair to you that people, solely based on their gender,
8 should have a different burden with regard to how much they're
9 expected to know about investing their retirement benefits?

10 MR. NAVARRO: I'm not suggesting that they need
11 to know more.

12 But what I'm suggesting is that retirement
13 benefits oftentimes comes from several sources: from a pension
14 plan, whatever form that might be; Social Security, if they are
15 eligible; and any other savings or any other investments that
16 there might be out there.

17 So, it might change the planning effort if you
18 compare a female and a male.

19 SENATOR BOWEN: I'm particularly concerned about
20 this because, you know, again statistically there are more
21 women, and I'm sure there are more women in the California
22 workforce, who are single parents, and are really struggling on
23 a monthly basis to deal with their ongoing expenses, don't have
24 the opportunity to purchase a home, particularly in today's real
25 estate market.

26 California's teachers don't participate in Social
27 Security. They are disproportionately female. I think that's
28 probably true of a number of other professions. My guess is

1 psych techs, nurses, still disproportionately female, still
2 disproportionately heads of households, still disproportionately
3 not receiving child support and therefore even less able to do
4 the kind of planning and set-aside that you're suggesting, I
5 think rightly, would be required.

6 So, I keep coming back to the same question.
7 Under a defined benefit plan, you still have the ongoing
8 struggles that I mentioned, but at least you don't have that
9 gap.

10 MR. NAVARRO: The statistical four-year gap.

11 SENATOR BOWEN: Yes.

12 MR. NAVARRO: Yeah. And again, I don't think I
13 have a good answer for you today other than it changes your
14 investment strategy and your planning strategy. But you have to
15 make those decisions early on in the career to take advantage of
16 compounding interest over time. That's just a fact.

17 SENATOR BOWEN: All right.

18 I'm going to suggest to you that I think it's
19 entirely unfair, and that no move towards a defined contribution
20 plan should be made without somebody really analyzing and laying
21 out for women in California who're contemplating public
22 employment what the impact will be on them when they reach
23 retirement age.

24 MR. NAVARRO: I'll certainly consider that.

25 SENATOR ASHBURN: As a follow-up to Senator
26 Bowen's comments with respect to an inequity based on gender.

27 Did you have any input in the capacity up to this
28 point of confirmation to the Governor's proposal with respect to

1 the change in the retirement system?

2 MR. NAVARRO: I constantly provide input on a lot
3 of issues affecting the workforce.

4 SENATOR ASHBURN: Well, I want to be more
5 specific, though, about the proposal, because as I interpret,
6 the Governor has specific language that has been submitted and
7 is out for signature gathering.

8 Did you author that plan?

9 MR. NAVARRO: No, I did not.

10 SENATOR ASHBURN: Did you have a significant
11 contribution to what is finally going to be qualified, if
12 successful, for the ballot?

13 MR. NAVARRO: I did not.

14 SENATOR ASHBURN: My point would be that you are
15 an administrator now and if you are confirmed. And that the
16 specifics of the proposal that Governor Schwarzenegger has put
17 forth are not your doing. That would be my point.

18 Is that a correct statement?

19 MR. NAVARRO: That is a correct statement at this
20 point in time.

21 SENATOR ASHBURN: And I assume that if you are
22 confirmed, you're going to do the very best job that you can
23 with whatever the decision of the voters may be?

24 MR. NAVARRO: Once that decision is made, if it's
25 made by the voters, I'll make it work.

26 SENATOR ASHBURN: Thank you very much.

27 CHAIRMAN PERATA: I haven't heard "at this point
28 in time" since the Watergate hearings.

1 MR. NAVARRO: Oh, no, please, please.

2 [Laughter.]

3 CHAIRMAN PERATA: Senator Cedillo, any comments,
4 questions?

5 SENATOR CEDILLO You have a fiduciary duty that's
6 been articulated. You made some reference to it.

7 Recently four members were removed after casting
8 votes. Another member was held up for confirmation based on a
9 different vote, same circumstance.

10 How do you define your fiduciary duty?

11 MR. NAVARRO: My fiduciary duty as a Cal PERS
12 Board member, I mean in its simplest terms, is to safeguard the
13 assets on behalf of the members. My obligation is to make
14 decisions that maximize the return at a minimal risk to the
15 members. And if at all possible, also control the
16 administrative costs associated with administering that plan.

17 Again, at the risk of oversimplifying, but I
18 think that's what it comes down to.

19 SENATOR CEDILLO: It's very simple.

20 That would be independent of whatever political
21 pressure or admonitions that you receive?

22 MR. NAVARRO: I, in all honesty, Senator, I have
23 not received any political pressures, or direction, or
24 admonitions.

25 SENATOR CEDILLO: That was not the question.

26 In other words, your commitment, your
27 understanding of your duty, that would be independent of
28 whatever? Your understanding of your duty, your fiduciary duty,

1 is independent of any political admonition, direction, or
2 pressure?

3 MR. NAVARRO: Absolutely.

4 SENATOR CEDILLO: You know, I want to have a
5 separate little conversation with you. You have impressive
6 credentials. I think you're very modest. You've been an
7 exemplary state employee for a significant time. You must have
8 started as a student worker; right?

9 But I'm concerned. I am very profoundly
10 concerned. You state that before you is the question of
11 payroll, layoffs, salary cuts.

12 I'm concerned that we're budgeted at negative 408
13 million that you have to find. And I'm concerned that there's
14 not a discussion.

15 You are in a position of leadership. You have an
16 intimate knowledge on the workings of the state, the value of
17 state service personally, but the value of state service to the
18 people of State of California.

19 I'm concerned that I didn't hear from you any
20 perspectives on the question of revenue, where revenue can be
21 generated from. I'd like to hear your point of view on that.

22 MR. NAVARRO: I did not address the issue of
23 revenue. In many respects, and to a large degree, that's really
24 outside of what DPA does.

25 I think part of my charge as the Director is to
26 work with the exclusive representatives that represent the
27 workforce. That's -- X number of dollars have been identified
28 to come out of that part of the budget.

1 So, what I'm suggesting is that DPA and the
2 employee organizations have to work together to identify those
3 solutions at the bargaining table.

4 I don't know that we really -- DPA as an agency
5 -- really has a role in revenue generation. That's not what we
6 do.

7 SENATOR CEDILLO: I'm concerned that with respect
8 to MOUs that are already expired, let me say that I didn't hear
9 you articulate a plan with benchmarks for having these MOUs
10 renegotiated promptly.

11 As you know, the workforce that comes to the
12 state comes because they believe they get decent pay, good
13 benefits, and can rely on a long-term future based upon its
14 retirement. Many people choose the public sector for that
15 stability, for that certainty, and not the private sector.

16 They make that choice, and now they're going to
17 be told that their pay will be reduced, the stability is
18 uncertain, and the future remains uncertain.

19 And in addition to that, they're not given a plan
20 or a program, benchmarks, of when at least within that
21 framework, within the framework of the MOU, when they can know
22 at least what are the parameters of that condition.

23 MR. NAVARRO: Let me state unequivocally that we
24 began the process in January and February. We scheduled six
25 sunshine sessions.

26 As you know, under the Dills Act, the employer
27 has to sunshine his proposals. The employee organizations have
28 to sunshine their proposals and make them available for comment

1 to the public.

2 That process began and was completed. The state
3 sunshined all of its proposals. We stand ready to meet the
4 organizations. We can't drag them to the table, but we are
5 prepared to go to the bargaining table today. In fact, we have
6 encouraged the organizations in writing to be prepared to
7 bargain.

8 Again, it's -- for whatever reason, they're not
9 prepared to come to the table yet.

10 SENATOR CEDILLO: And then the Pro Tem has asked
11 you some of these questions, but I'm perplexed on how you can
12 reconcile the charge you have of reducing payroll, reducing
13 workforce, and at the same time this tremendous challenge that
14 you have with recruitment and retention, particularly at
15 leadership levels?

16 MR. NAVARRO: Bear in mind, and perhaps I needed
17 to clarify my example.

18 When I talked about reducing payroll, I was
19 talking about a situation that may or may not arise in the
20 future.

21 But what concerns me is right now, we have only
22 two methods to deal with that situation. That's pay reductions
23 or layoffs. We need a third tool, and that's what we're
24 suggesting in terms of furloughs.

25 It isn't furloughs -- furloughs would be resorted
26 to only in those situations where we have a serious fiscal
27 emergency. And we would be prepared to put into statute what
28 those triggers might be, so it isn't something that the employer

1 would utilize on a unilateral basis and apply willy-nilly.
2 That's not the intent.

3 We simply want to make available a third tool if
4 and when that situation arises.

5 To some degree -- I mean, in my mind that's much
6 less -- a furlough program, for example, is much less draconian
7 than a layoff or an actual reduction in salary. We're looking
8 for options, Senator.

9 SENATOR CEDILLO: I'm getting the look.

10 [Laughter.]

11 MR. NAVARRO: Not from me. Let the record show,
12 not from me.

13 [Laughter.]

14 SENATOR CEDILLO: One last thing. Give me your
15 perspective. There's a concern that gets brought to me
16 frequently as a State Senator, because people think we do more
17 oversight. Many people think we do management of departments
18 rather than having it administered by you.

19 But there is a lot of concern that gets brought
20 to me about the life of the MOU. In other words, you go through
21 the negotiating process; you sign an MOU; it's got a term. But
22 during that period in between, there's rights and
23 responsibilities that are constant.

24 There's a frustration that's brought to me by
25 many workers, by collective bargaining units, that once you
26 leave the table, that then other than salary and benefits, the
27 meat, or the meaningful part of the MOU, is not respected.

28 That is really a challenge of leadership. I do

1 not believe that your position or you are insignificant or
2 unimportant in setting the tone and the tenor for the treatment
3 of state workers for the entirety of the State of California
4 with respect to their workplace rights, their rights to
5 organize, their rights delineated in statute and reaffirmed in
6 the MOU.

7 Tell me about your perspective and position on
8 that.

9 MR. NAVARRO: I think I would have to, in fact I
10 know I would have to disagree with the perception that the only
11 thing that matters is negotiating the contract and making sure
12 that people -- people get paid.

13 Each and every provision of the MOU or the
14 contract has a purpose. It was negotiated for a reason, either
15 the employer felt it was necessary, or the union felt it was
16 necessary, or they both felt it was necessary. But it's a term
17 of the contract.

18 And Senator, a deal is a deal a deal. If you put
19 it within the four corners of the agreement, you're obligated to
20 live by it for the duration of the agreement.

21 That's the way we operate within DPA, and that's
22 how we instruct the line agencies.

23 SENATOR CEDILLO: You could not say anything more
24 exciting to me than to say a deal is a deal is a deal.

25 MR. NAVARRO: It is. It is.

26 SENATOR CEDILLO: I appreciate that incredibly.
27 Thank you.

28 CHAIRMAN PERATA: Anything further?

1 Now we come to the audience participation part of
2 the program.

3 SENATOR BOWEN: Senator Perata, if I might,
4 there's always the risk, of course, that we each feed off each
5 other's questions.

6 But two questions arose immediately with the
7 discussion about furloughs. One is, what's a fiscal emergency.

8 The second comes from, I think, the inexperience
9 that all of us have as Senators, which is people calling here or
10 the district offices because their license application, their
11 fingerprint screening, their whatever it is, is in a file
12 somewhere on a box on someone's desk, and there's a six-week, or
13 an eight-week, or a three-month, or a seven-month delay because
14 there simply aren't enough human beings to do the work.

15 So the question, I guess the question with regard
16 to furloughs arises, you know, whether it actually accomplishes
17 anything other than shifting the cost of processing license
18 applications from one year to another, and decreases the ability
19 of the private sector, that relies on getting those things done,
20 to operate?

21 MR. NAVARRO: I guess in my view a furlough is
22 less disruptive because you have more opportunity to manage it.

23 In the case of a layoff, if you have 10 people
24 issuing those licenses and 3 are laid off, you are left with 7
25 people; as opposed to a furlough, where maybe you rotate that
26 cut in the workforce so that only one individual is gone on a
27 given day, then the next day another individual is gone.

28 It's more manageable. It's less disruptive for

1 the employees and for the employer. And as to the --

2 SENATOR BOWEN: The question arises, if you have
3 10 people, and you're operating with 9, why don't you just have
4 9 people if they can do the work?

5 MR. NAVARRO: And again, we're not suggesting
6 that furloughs be used at the drop of a hat.

7 I think we could certainly put into statute very
8 specific language that would authorize the Governor to issue a
9 furlough only in very specified situations, when certain fiscal
10 triggers were met. I really think that's do-able.

11 SENATOR BOWEN: What about the question of, if
12 you're managing the fiscal situation by basically doing the same
13 caseload with 9 people instead of 10, I just don't understand
14 why you wouldn't just have 9 employees, if that's how many it
15 takes to do the work?

16 MR. NAVARRO: I'm not saying that you magically
17 are able to convert a caseload for 10 people into 9. I'm just
18 saying it's a little bit easier to manage it.

19 It is going to cause some disruption, but it's
20 not going to be as disruptive as permanently losing three
21 bodies, if you will.

22 CHAIRMAN PERATA: Now, anyone here like to speak
23 in support of in a nice, pithy manner, come forward.

24 MR. DOLSON: My name is Larry Dolson. I'm the
25 Director of Operating Engineers, Unit 12. We represent about
26 10,000 state employees in the Craft and Maintenance Division.

27 I've known Mike Navarro about 15 years now. I've
28 negotiated at least four collective bargaining agreements with

1 him before he became -- had his current position. I've sat
2 across the table from him. We haven't always agreed.

3 But I can tell you from my point of view that
4 Mike has always been someone who's been honest with us, even if
5 we didn't want to hear what he had to say. He's always been
6 someone who's been willing to sit down and try to work and find
7 some common ground for the position that he had to take, or he
8 was required to take as a direction from his principals.

9 We've been able to, over the years, get through
10 some pretty tough bargaining, come up with some pretty creative
11 solutions to issues that worked for both of us.

12 And I would urge you support Mike as the Director
13 of the Department of Personnel Administration.

14 CHAIRMAN PERATA: Thank you.

15 Anyone further? Yes, sir.

16 MR. MURCH: Yes. My name is Ken Murch. I serve
17 as the chief negotiator for the California Association of
18 Psychiatric Technicians, Bargaining Unit 18.

19 I want to support Mike's appointment. I've known
20 him, like Larry, for many, many years. He's -- he's a career
21 labor relations guy. He appears that at an early age, that he
22 set out in life to do this.

23 He's worked both for the Democrat administration
24 as well as Republicans. I've negotiated under his
25 administration, I don't know, six or eight contracts.

26 I feel he's a pretty good guy. These are
27 difficult times for both labor and management. And personally,
28 I'd rather be dealing with somebody that's head of DPA than I

1 know, that I know his character, than a complete stranger.

2 Many of the decisions that have to be made at the
3 table are made by people that aren't there. And I think Mike
4 will carry his credibility there. He's never lied to me. We've
5 had some pretty tough times at the bargaining table, and I think
6 he'll do a good job.

7 Is he going to resolve all the problems that my
8 bargaining unit has? I don't know because it's in pretty bad
9 shape. But at least I know there's a forum there.

10 And he works for the Governor. And he's subject
11 to all the other things that's evolving here: finances; lack of
12 trained staff; recruitment problems. Hopefully, though, we can
13 get at the bargaining table and resolve these issues.

14 So, I would urge the Committee to confirm Mike.

15 CHAIRMAN PERATA: Thank you.

16 Anyone else? Anyone here in opposition?

17 MR. HARD: Thank you, Mr. Chair and Members. I
18 appreciate the opportunity to speak today.

19 Jim Hard. I'm President of SEIU Local 1000. We
20 represent about 89,000 civil service employees.

21 So, as I was saying, this confirmation is taking
22 place in one of the most tumultuous times in California's state
23 government history with the Governor's proposal, including the
24 termination of three long-standing retirement systems: the
25 Public Employee Retirement System; the State Teacher's
26 Retirement System; and the University of California Retirement
27 System.

28 And I would say that these extremist proposals

1 deserve the harshest review. And clearly, the Governor's
2 actions are going off the charts in a Hollywood redefinition of
3 evil special interests.

4 I've been a state employee and a union
5 representative for over 20 years. I've never seen such an
6 outpouring of anger and fear from our members. Our levels of
7 local participation are, of course, sky-rocketing because of
8 this. And we've seen all kinds of people, and I wouldn't be
9 surprised to see some of our 35,000 state supervisors and
10 confidential employees joining the rest of us in opposing these
11 proposals.

12 And I understand that Mr. Navarro's job at the
13 bargaining table, to bring his meat cleaver for the Governor, is
14 appropriate. That's where that takes place.

15 My concern is what Senator Cedillo asked in the
16 end, which is, what is the commitment to carry out agreements
17 that are come to through the negotiating process? And I would
18 have to differ with Navarro about the administration of the
19 Department of Personnel Administration and their willingness to
20 abide by contracts that are signed with them and carry them out.
21 In fact, there's a long list, and I'll be sure that each Senator
22 on the Committee gets a copy of the portions of our contract
23 that DPA has just flat-out refused to carry out.

24 Also, in terms of one particular issue, which is
25 access to state employees, it's our position that the Department
26 of Personnel Administration is, in fact, aiding and abetting and
27 encouraging departments to circumvent the agreement that we have
28 in terms of communicating with state employees, and actually

1 creating barriers to carry that out.

2 In fact, recently DPA had me arrested while
3 distributing fliers to state employees. And it took a Superior
4 Court judge to order DPA to drop the arrest charge and permit
5 such leafletting from now on.

6 But, as I said, DPA continues to encourage
7 departments to circumvent these rights, and also to continue to
8 find ways to obstruct these agreements that we've come to
9 through negotiating.

10 This month, the DPA ordered all departments to
11 send an anti-strike warning to employees on e-mail and placed
12 them on bulletin boards. This tactic was justified by DPA
13 because two words were used in some of the union communications
14 that said SEIU members would stop work to participate in sending
15 a message to the Governor to stop his assaults on our secure
16 pensions.

17 Now, that could easily be interpreted that there
18 was going to be an actual labor work stoppage. On the other
19 hand, it could easily mean, and in fact did mean, people were
20 going to attend these on their breaks and lunch periods.

21 We got not one phone call from DPA, no
22 communication with the union whatsoever to clarify this. It
23 would have been very simple to clarify it because normally
24 unions, if you're not a union guy, you know, you're going to do
25 a job action, you don't actually put a flyer out that gives the
26 date, time to take it.

27 So, this is just bullying tactics from the
28 Department of Personnel Administration. But also, they do just

1 a terrible job of managing the mundane, everyday business of
2 personnel administration. And some of it is beyond their
3 control.

4 For example, the California Performance Review
5 Committee, the CPR, warned that DPA's Classification and
6 Compensation Division was totally understaffed. And they quoted
7 DPA as saying, quote, "In the last five years, much needed
8 classification studies, assessments of salary relationships, and
9 other regular maintenance activities have been put on hold."

10 Well, there's no surprise in that because they've
11 cut their staff from 41 professional staff to 11 today.

12 Those are some of the contractual agreements that
13 they are reneging on, and have for almost two years. This
14 contract's two years old, it'll end on June 30th, that I'm
15 talking about right now.

16 Well, so to conclude, I would hope that -- and I
17 hate to ask this of the Senate -- but I hope that you will
18 continue to look into the behavior of the DPA and, frankly,
19 Mr. Navarro, because they have not carried out those parts of
20 the contract. And certainly, they're in the four corners of the
21 contract, and there's a long list of particularly, frankly,
22 classification studies that the Department of Personnel
23 Administration has just said, "Well, tough. We signed it. It's
24 there, but we're not doing it. So, what are you going to do
25 about it?"

26 I don't think that's the way to run the personnel
27 shop.

28 And in terms of Mr. Navarro's comments about his

1 shutting down training, but however we're trying to provide it.
2 Yes, we are trying to provide it through the CPR, which is the
3 CPS, Cooperative Personnel Services, which is a number of
4 retired state administrators who have put a company together.
5 So basically what he's telling you is, they are shutting it down
6 and contracting it out, which is not news.

7 And the final comment I'd have to make about DPA
8 and revenue raising is in fact that we have -- we represent the
9 Franchise Tax Board tax auditors, those at BOE, and EDD. And
10 our members do in fact have some very good ideas about how the
11 state could be more effective in collecting tax revenues. And
12 we have offered to meet to discuss those. We have got not one
13 response. I don't think this administration, nor DPA, nor
14 Mr. Navarro are interested in effective and efficient
15 government. I think that this is a shame.

16 And the other thing is, the proposal which I
17 guess Mr. Navarro didn't have any hand in writing but he's going
18 to try to execute, the proposal not in the Legislature, not in
19 the initiative, but in front of us, is one of the most absurd
20 things I've ever heard. This Governor is going to propose that
21 state employees will -- their take-home pay will change every
22 year because the individual employee will be expected to pick up
23 the employer's now fluctuating share each year. And that, of
24 course, is determined by actuarial report each June for the Cal
25 PERS.

26 So, you know, I hope the Senate Committee will
27 take a look and keep an eye on DPA, because so far, they do not
28 carry out their agreements. And I think that without that kind

1 of commitment, to live by the agreements you make, you cannot
2 have decent labor relations.

3 Thank you.

4 SENATOR ASHBURN: Question, Mr. Chair, while
5 Mr. Hard is there.

6 Let me ask you, Mr. Navarro, when you became
7 aware that the gentleman had been placed under arrest, was there
8 any action that you personally took with respect to that?

9 MR. NAVARRO: Yes. I know about the incident
10 that Mr. Hard is referring to. It was an incident at the
11 Ziggurat building where he was passing out some leaflets, as I
12 understand.

13 I became aware of it after, quite frankly, after
14 the incident took place. I did personally make some phone calls
15 because I wanted to know what had happened. I learned that
16 there'd been no property damage. There had been no injuries.
17 But in fact the CHP had been called, I believe, by one of the
18 security officers there.

19 I wanted, quite frankly, from the state's
20 perspective, to try and get this behind us, so I did in fact
21 call the Yolo County District Attorney and asked for some
22 consideration in this matter. I informed him that the state was
23 not interested in pressing charges. No property damage, no
24 injuries. And, you know, can we let bygones be bygones.

25 SENATOR ASHBURN: So you personally made a call
26 to the District Attorney of Yolo County on behalf of Mr. Hard.

27 MR. NAVARRO: I did.

28 SENATOR ASHBURN: Were you aware of that, sir?

1 Through the Chair.

2 MR. HARD: No, I was not aware that he called the
3 District Attorney.

4 SENATOR ASHBURN: Thanks. Maybe we've helped
5 clear up a misunderstanding.

6 Thank you.

7 CHAIRMAN PERATA: Any further opposition? Seeing
8 none, the pleasure of the Committee?

9 SENATOR BATTIN: Move.

10 CHAIRMAN PERATA: We have a motion to approve.
11 Further discussion?

12 Hearing none, Secretary, please call the roll.

13 SECRETARY WEBB: Ashburn.

14 SENATOR ASHBURN: Aye.

15 SECRETARY WEBB: Ashburn Aye. Bowen.

16 SENATOR BOWEN: Aye.

17 SECRETARY WEBB: Bowen Aye. Cedillo.

18 SENATOR CEDILLO: Mr. Chairman, I'm going to
19 vote Aye, but I want to just emphasize this incident that took
20 place. Wholely inappropriate. Unions have a right to organize.
21 They have rights delineated within their MOU. It appears that
22 there's a court order restraining the state from interfering.
23 We, the state, broke the law.

24 We did not confirm a previous appointee because
25 he was persistent on pursuing what he thought was a policy
26 perspective that was already defined by law.

27 I will vote for the confirmation, but I just want
28 to emphasize that, as you said, a deal is a deal is a deal. I

1 will take you at your word.

2 I just would ask you to be more vigilant and make
3 sure that all those who work beneath you share your commitment
4 to enforcing collective bargaining agreements and the rights of
5 the men and women who work for this great state.

6 MR. NAVARRO: They do and they will.

7 SENATOR CEDILLO: Thank you.

8 SECRETARY WEBB: Cedillo.

9 SENATOR CEDILLO: Aye.

10 SECRETARY WEBB: Cedillo Aye. Battin.

11 SENATOR BATTIN: Aye.

12 SECRETARY WEBB: Battin Aye. Perata.

13 CHAIRMAN PERATA: Aye.

14 SECRETARY WEBB: Perata Aye. Five to zero.

15 CHAIRMAN PERATA: I have one thing. I'll do this
16 under cover of letter, but I want you just to be aware of it.
17 And that is, I think the last time we did a complete salary
18 survey, it's been quite sometime, as I understand it.

19 MR. NAVARRO: That's correct.

20 CHAIRMAN PERATA: So, you'll get a communication.
21 I'd like to do whatever I can to help you institute one.

22 MR. NAVARRO: We would welcome that. Thank you
23 very much.

24 CHAIRMAN PERATA: Great, thank you and
25 congratulations.

26 MR. NAVARRO: Thank you very much.

27 CHAIRMAN PERATA: He did well enough now to call
28 up Mr. Avritt. Your turn.

1 Since you're the deputy, we'll go a little easier
2 on you.

3 MR. AVRITT: And I appreciate that.

4 CHAIRMAN PERATA: You probably make more than he
5 does because of compaction; don't you?

6 MR. AVRITT: I wish I could make that true, but I
7 don't think it is.

8 CHAIRMAN PERATA: Proceed, please.

9 MR. AVRITT: Good afternoon. I'd like to thank
10 you for the opportunity to appear before this panel.

11 I have been honored to have been appointed by the
12 Governor as the Deputy Director of the Department of Personnel
13 Administration. I come before this panel to offer information
14 to assist you in your deliberations.

15 I would like to tell you briefly of my background
16 and experiences, and what I bring to the position.

17 I was born in San Diego, California, but raised
18 in Albuquerque, New Mexico. There I attended school and spent
19 many weekends with my grandmother and other relatives on the San
20 Felipe Indian Reservation. As a Native American, I'm very proud
21 of my heritage.

22 I returned to California and served in the United
23 States Navy for four years. Upon my discharge, I used the GI
24 Bill to attend and graduate from San Diego State University.
25 When I graduated, I went to work for the State of California at
26 the State Personnel Board as a staff services analyst.

27 My next comment is going to go to the one that
28 you asked about, why?

1 My intent was to stay for a few years in the
2 state service and then move into the private sector. However,
3 after a couple of years I left the State Personnel Board and
4 went to work for the Department of Developmental Services as a
5 labor relations analyst. While at DDS, I witnessed the kinds of
6 services being provided to some of our most challenged and needy
7 California residents. I realized that these and other services
8 can only be provided by the state, and I decided that I would
9 like to stay, and I changed my mind about leaving state
10 service.

11 In addition to the Department of Developmental
12 Services and the State Personnel Board, I have worked for the
13 Departments of Health Services and Mental Health, and now the
14 Department of Personnel Administration. For 20 years of my
15 career I have been in managerial positions, including division
16 chief, labor relations officer, personnel officer, chief of
17 human resources, and deputy director of administrative services.
18 I am now approaching my 31st year with the state and have found
19 my experience both exciting and rewarding.

20 What I bring to the position is knowledge of
21 state service and the inner workings of state departments and
22 knowledge of collective bargaining. Most of my career has been
23 spent in the human resources area, including classification and
24 pay, labor relations, selection, workers' compensation, and
25 training. In addition, I've also worked in program while at
26 Health Services. My program experience has given me an
27 appreciation of what HR services are needed, and how they should
28 be provided to state programs.

1 I've also participated in and served as the chair
2 of the Ad Hoc Committee on Personnel, which is a group of large
3 state departments who deal with personnel issues on a regular
4 basis.

5 I believe you have information on my short and
6 long term goals as the Deputy Director, but I would like to
7 stress two of them, and they stem from some of the questions
8 that you asked Michael Navarro.

9 One is -- one of my goals is to develop a total
10 compensation package for excluded and exempt employees to
11 address the compaction and recruitment and retention problems
12 departments are facing.

13 Second, work within available resources to ensure
14 adequate training for the state's workforce, including
15 leadership training and succession planning. And all these
16 items are now included on our strategic plan which we are
17 currently bringing to completion.

18 Senators, thank you very much. That concludes my
19 presentation. If you have any other questions, I'll be glad to
20 answer them.

21 CHAIRMAN PERATA: I do, thank you. I have a
22 question regarding, are we having difficulty attracting workers
23 in any particular area of the state that you're aware of?

24 MR. AVRITT: Probably the greatest area is in the
25 level of care area. Nurses, as we probably all know, nurses are
26 at a shortage, irrespective whether it's the State of California
27 or anywhere in the United States.

28 We are having a significant problem, especially

1 departments like the Department of Corrections, the Department
2 of Developmental Services. Any type of level of care staff is
3 hard to gather.

4 We're in competition with many others:
5 hospitals, counties, cities. And so, we are always at odds with
6 others trying to capture a very small group of individuals.

7 CHAIRMAN PERATA: And a salary survey that is
8 current would help give us some idea of where we lack
9 competitiveness; is that accurate?

10 MR. AVRITT: Yes, the use of salary data, which
11 is one thing that Mike has stressed, and we want to use it both
12 for rank and file as well as manager and supervisor
13 compensation, is a basis upon which we can make decisions: are
14 we paying enough; are we paying too little; where, in which part
15 of the state are we paying these types of compensation?

16 We're also looking at total compensation as well,
17 because salary is not the only basis upon which a person is
18 going to make a determination, nor is it a means in which to
19 attract a person. So, we're looking at the full realm.
20 Benefits, other kinds of things that we give them, time off,
21 and those kind of things will be included.

22 CHAIRMAN PERATA: The political importance of
23 what you're undertaking, and which we'll encourage you to do
24 rapidly, goes to the heart of the matter of this whole
25 discussion about state compensation and pension benefits.

26 I'm relatively involved, and I could not possibly
27 tell you about that.

28 I do know that when I was in county government in

1 the County of Alameda, our total package per line, that is per
2 employment category, was substantially greater than the
3 competitor of the State of California.

4 So, I think having this information probably will
5 be educational to lots of us. And it's pretty easy to draw down
6 on a state employee or a state category and say this and that
7 about it. But it seems to me that we really don't have much of
8 an understanding.

9 The other thing that concerns me is that, as we
10 are trying to attract young people into this business, the
11 prohibitive costs of housing, it would seem to me, place well
12 beyond some of them the prospect of being in state government
13 and ever owning a home, which that you have to look at other
14 means of compensation that offsets that.

15 So, those are the things that I'd like in a very
16 expansive view. And as I said, I'll put this in a letter and
17 now I'm going to tell you what I'll write, but that's very
18 important. I'll ask you some specific questions at that time.

19 But I'd like to ask you just one question as
20 someone who's been in here almost 31 years. What's the biggest
21 change you've seen in state employment since you began?

22 MR. AVRITT: Well, I think it's when collective
23 bargaining came into place. There was a -- I think there was a
24 lack of really understanding what employees wanted or needed
25 prior to collective bargaining. And the union's picked up that
26 and has carried it forward and presented to the administration.
27 I think we've had to give a lot more consideration about what
28 employees need, can have, what they should have, and they needed

1 to tell us. And that's what collective bargaining has done.

2 So, I think collective bargaining has made a big
3 difference in the state in the way we operate.

4 CHAIRMAN PERATA: Any other questions? Yes,
5 Debra.

6 SENATOR BOWEN: I don't want Mr. Navarro to feel
7 like I picked on him exclusively. But I think the closer you
8 get to the top, the harder the questions get.

9 I really only have one question. I take it you
10 heard the discussion. I'm going to be concerned with all the
11 Governor's appointees on how we deal with this issue of
12 retirement benefits and gender impact. So, I expect anybody
13 who's heard this is already sufficiently sensitized to the
14 issue.

15 In your goals, one of the things that you have
16 listed as a long-term goal is to renegotiate benefit contracts
17 at a competitive price with the highest quality services.

18 I just simply don't know what that means.

19 MR. AVRITT: We're responsible in our Benefits
20 Division for providing dental benefits, for obtaining vision
21 benefits.

22 And what we're trying to do is, there's always a
23 constant movement from vendors to want a higher price. And what
24 we're trying to do is maintain it as best we possibly can, still
25 high quality, but within a reasonable range. We know they're
26 always going to want some increases, and we are always working
27 to help keep those at a low level. That's what that means.

28 SENATOR BOWEN: All right.

1 Actually then let me mention something to you.
2 When you're dealing with, and this may be a Cal PERS issue, do
3 you do the pharmacy benefits, or does Cal PERS?

4 MR. AVRITT: No, that's Cal PERS. We do not.

5 SENATOR BOWEN: I'll raise the issue with them.

6 I've become aware that Cal PERS contract pharmacy
7 has been dating prescriptions with an expiration date that's
8 earlier than the manufacturer's expiration date, which means
9 that participants are looking at the prescription bottle and
10 filling the prescriptions before they need to. And the state is
11 picking up -- participants are paying the co-pay, and the state
12 is paying the balance of it earlier than they should. People
13 are, I'm certain, throwing away unexpired medicines.

14 So, I'll raise that with Cal PERS.

15 CHAIRMAN PERATA: Director Navarro, in your
16 capacity on Cal PERS, you, I'm sure, will take note.

17 MR. NAVARRO: Yes.

18 CHAIRMAN PERATA: Thank you.

19 SENATOR ASHBURN: I just have one question. It's
20 more a historical question.

21 When did the Legislature get into the business of
22 confirming Deputy Director and the Counsel for a department? Do
23 you know when this happened and why?

24 MR. AVRITT: I have no idea.

25 CHAIRMAN PERATA: It wasn't your idea, was it?

26 [Laughter.]

27 MR. AVRITT: I just took the job. They told me
28 this was going to happen later.

1 SENATOR ASHBURN: I thought since you presumably
2 are going to have this job, and you've been acting, that you
3 might know what the history was.

4 My view is that the executive, we have separation
5 of powers. We have an executive branch. We have confirmation
6 authority over the Director. We gave Mr. Navarro a fairly
7 significant time.

8 It's interesting that we're here. Even the
9 attorney is going to come here next. We've got a lot of
10 questions for him.

11 CHAIRMAN PERATA: That's right.

12 [Laughter.]

13 SENATOR CEDILLO: Let me share Mr. Ashburn's
14 perspective, which is why I'm going to save you for any
15 questions and assume that all the authority rises to
16 Mr. Navarro's level. I have a firm belief in his leadership.

17 MR. AVRITT: Certainly we have -- we treat --
18 we're a management team. And we're going in the direction that
19 we believe is the appropriate way to help serve, you know, the
20 state departments and the people of California.

21 CHAIRMAN PERATA: You haven't even been confirmed
22 yet and you're using the editorial "we".

23 [Laughter.]

24 MR. AVRITT: Our management style is the "we".

25 CHAIRMAN PERATA: Anything further?

26 Anybody here like to speak in favor of or in
27 opposition to?

28 Seeing none, call the roll, please.

1 SENATOR BATTIN: Move.

2 SECRETARY WEBB: Ashburn.

3 SENATOR ASHBURN: Aye.

4 SECRETARY WEBB: Ashburn Aye. Bowen.

5 SENATOR BOWEN: Aye.

6 SECRETARY WEBB: Bowen Aye. Cedillo.

7 SENATOR CEDILLO: Aye.

8 SECRETARY WEBB: Cedillo Aye. Battin.

9 SENATOR BATTIN: Aye.

10 SECRETARY WEBB: Battin Aye. Perata.

11 CHAIRMAN PERATA: Aye.

12 SECRETARY WEBB: Perata Aye. Five to zero.

13 CHAIRMAN PERATA: Congratulations.

14 MR. AVRITT: Thank you very much.

15 CHAIRMAN PERATA: Now Mr. Curtis, I think that
16 you probably heard expressed by both parties the point of view
17 that we have with the capacity of your position, so we're really
18 happy to have you here. Don't feel compelled to belabor the
19 point. We know where we can find you if we have any
20 questions.

21 MR. CURTIS: Do I need to say anything?

22 CHAIRMAN PERATA: Go ahead.

23 MR. CURTIS: If it please the Chair and Senators,
24 I'm pleased and honored to have been appointed by Governor
25 Schwarzenegger as Chief Counsel of the Department of Personnel
26 Administration.

27 In this position, I've been able to draw on some
28 25 years' experience in labor relations, beginning as a labor

1 relations intern for a statewide police organization, through
2 some 10 years at the collective bargaining table, negotiating
3 collective bargaining agreements, and in the public sector.

4 In dealing with the challenges of managing
5 attorneys and support staff first as a law partner in private
6 practice, then as a deputy chief counsel for the Department of
7 Personnel Administration, then as the chief counsel and prior, I
8 came to state service from private practice in 1988 by way of
9 appointment as legal advisor to the PERB Board Chair, and that
10 Chair, Deborah Hussey, is in the audience, I believe. And I
11 learned a lot about labor relations in the state in that
12 position.

13 But that position allowed me to transition from
14 an advocate for employees and unions to a neutral, and then
15 allowed me to go on to DPA.

16 In 1991, I was appointed senior labor relations
17 officer at DPA to negotiate collective bargaining agreements,
18 not as an attorney. And subsequently, in 1992, I accepted the
19 position of deputy chief counsel because of my management skills
20 learned in private practice as a senior partner in a law firm.
21 During my tenure as deputy chief, I served as acting chief
22 counsel when the chief counsel was out of the office for
23 extended periods. Then in 1996, after confirmation by the State
24 Senate, I held the office of chief counsel until mid 1999, when
25 the administrations changed.

26 My litigation experience at DPA has been devoted
27 mostly to cases arising out of the Dills Act and the collective
28 bargaining problems in maintaining the Memorandum of

1 Understanding. That is, arbitrations and defense of ancillary
2 actions as are filed at the Unfair Labor Practices before the
3 Public Employment Relations Board.

4 Much of my experience in private practice
5 involved representing public safety unions and their members in
6 personnel actions before the various civil service commissions,
7 the State Personnel Board, and then labor relations matters
8 before various arbitrators throughout the State of California,
9 with county boards of supervisors, the Public Employment
10 Relations Board, and state courts, and predominantly in
11 disability retirement for law enforcement officers and
12 firefighters, as most were members of either Cal PERS or the
13 1937 Act Counties.

14 I believe these experiences qualify me for the
15 position of Chief Counsel of the DPA. Additionally, the years
16 I've spent as an advocate for organized labor have given me the
17 valuable insight to facilitating mutually acceptable
18 agreements. And the settlement of disputes naturally flow from
19 the give and take at the bargaining table.

20 Finally, I would like to thank the staff members
21 of the Committee and the individual Senators for your assistance
22 in preparing for this hearing.

23 I would like, if the Senator would -- if the
24 Chair would allow me, I would like to read from a transcript
25 from a Superior Court case, because as you know, attorneys are
26 advocates. Sitting back here and reading -- or listening to
27 what some of the individuals have said kind of rubbed me the
28 wrong way. If you would indulge me in that, I would greatly

1 appreciate it.

2 CHAIRMAN PERATA: We're attacking the judge here?

3 MR. CURTIS: No. I've been around too long for
4 that one.

5 This is before the Sacramento Superior Court, the
6 Honorable Lloyd Connolly, Judge, Department 33 on February 4th,
7 2005. That was the case where the SEIU took the CHP to task on
8 their regulation, which ended in Mr. Hard's arrest. Mr. Thomas
9 is one of my subordinate attorneys, and he said to the judge,
10 and this is the judge's order I'm reading from:

11 "MR. THOMAS: I don't see why we
12 are,"

13 that is DPA,

14 "even named as a party. I
15 certainly ask that there be no
16 relief against DPA.

17 "THE COURT: Fair enough."

18 I just wanted to set that straight.

19 CHAIRMAN PERATA: Thank you very much.

20 Questions? Let's let him slide. He's got enough
21 trouble as a lawyer.

22 [Laughter.]

23 SENATOR BOWEN: I was going ask him how familiar
24 he was with Shakespeare, but I'll back off that one.

25 CHAIRMAN PERATA: How many people do you have
26 under your command?

27 MR. CURTIS: Mr. Avritt and I both served in the
28 Navy. I served for 12 years in the submarine service. It's in

1 my resume. So, command is good.

2 We have about 40 employees; 20-some attorneys and
3 support staff make up the remainder of it.

4 SENATOR BOWEN: I actually saw that submarine
5 service there and was going to ask you, how you think that's
6 helped you in your state service? It's my guess that it's
7 probably one of your most valuable skill sets, working in
8 enclosed places with people you may or may not like.

9 [Laughter.]

10 CHAIRMAN PERATA: Under water.

11 MR. CURTIS: Especially when we're at the
12 bargaining table, in the closed, little, cheap rooms we get to
13 rent for bargaining.

14 CHAIRMAN PERATA: We have a motion from Senator
15 Ashburn to approve.

16 Call the roll, please.

17 SECRETARY WEBB: Ashburn.

18 SENATOR ASHBURN: Aye.

19 SECRETARY WEBB: Ashburn Aye. Bowen.

20 SENATOR BOWEN: Aye.

21 SECRETARY WEBB: Bowen Aye. Cedillo.

22 SENATOR CEDILLO: Aye.

23 SECRETARY WEBB: Cedillo Aye. Battin.

24 SENATOR BATTIN: Aye.

25 SECRETARY WEBB: Battin Aye. Perata.

26 CHAIRMAN PERATA: Aye.

27 SECRETARY WEBB: Perata Aye. Five to zero.

28 CHAIRMAN PERATA: Congratulations.

1 MR. CURTIS: Thank you, Senators.

2 CHAIRMAN PERATA: Thank you all very much.
3 Fortify yourselves with a couple stiff belts.

4 Our final appointee is Lilian Shek. Thank you
5 for sitting through all this. We'll try to make this painless.
6 We've taken care of the boys now, so we'll get down to the part
7 we enjoy.

8 Please, feel free to open.

9 MS. SHEK: Good afternoon, Chair and Members of
10 the Senate Rules Committee. I really appreciate having this
11 opportunity to appear before you this afternoon.

12 My name's Lilian Shek. I assumed office as a
13 board member for the Public Employment Relations Board on
14 November 15th, 2004.

15 The Public Employment Relations Board is a
16 full-time quasi-judicial administrative agency charged with
17 administering collective bargaining statutes that cover the
18 public employees, employers, and labor organizations of
19 California: schools, community colleges, State Universities,
20 University of California, Hastings College of the Law which is
21 my alma mater, as well as the State of California and the public
22 employees of the California local agencies, including cities,
23 counties, special districts, and trial court employees and
24 interpreters, and supervisory employees of Los Angeles County
25 Metropolitan Transportation Authority.

26 The board has -- the two main functions of the
27 board are evaluation and adjudication of unfair labor practice
28 charges, as well as administering the statutory procedures

1 through which the public employees may freely select and elect
2 their exclusive labor representative.

3 My 28 years of professional legal and academic
4 experiences have assisted me in transitioning quite easily into
5 my new position. I was an Administrative Law Judge II for the
6 Unemployment Insurance Appeals Board for almost 13 years.

7 Before that, I was an attorney in private law practice, during
8 which time I was also an assistant professor and lecturer of
9 business law at Sacramento State University, and a hearing
10 officer for the Sacramento County Civil Service Commission.

11 My main goal in serving on the board is to ensure
12 that the collective bargaining statutes are administered
13 according to the letter and spirit of the law.

14 And my other goal is, when I was an
15 administrative law judge, I exercised due diligence in examining
16 the facts of each and every case that came before me, applying
17 the law to the facts, and reaching a conclusion that is fair and
18 reasonable.

19 Currently as a board member, I have followed the
20 same principles of integrity and work ethic in adjudicating the
21 labor disputes about the employees, the public employees,
22 employers, and labor organizations.

23 If confirmed by this esteemed body, I look
24 forward to working with my colleagues on the board and our hard
25 working staff in allocating the board's resources properly, to
26 provide efficient and cost effective resolution to labor
27 disputes through investigation, settlement, mediation,
28 administrative law hearings, and issuance of well written and

1 well reasoned board decisions. I will also work on improving
2 our caseload management, as well as making information available
3 to our constituent groups, information such as the board's
4 latest board decisions and regulations, so that they can utilize
5 labor dispute resolution effectively.

6 It has been indeed a privilege for me to serve
7 the public employment segment of the State of California. And
8 it would be an honor for me to continue my service and
9 contribution.

10 Thanks again for giving me this opportunity to
11 share my goals and vision as a board member of the Public
12 Employment Relations Board. Thank you.

13 CHAIRMAN PERATA: Thank you.

14 Questions by the Committee?

15 I have one. You mentioned something that had
16 come up previously, and that is the failure of certain, I guess,
17 departments to enforce the provisions of a labor contract.

18 Is that something that you can actively pursue,
19 or do you have to wait until something is brought before you?

20 MS. SHEK: We have to wait until a charge is
21 actually filed before us, then we would have jurisdiction.

22 SENATOR CEDILLO: Then from that point, you have
23 broad powers; right? You can be directive?

24 MS. SHEK: Yes. What we will do is, we will be
25 investigated, the charge will be investigated by our legal
26 staff, who's called a board agent. And the charge will either
27 be dismissed or the complaint will be issued.

28 If a complaint is issued, then the case will go

1 to what we call an informal settlement before the administrative
2 hearing. An administrative law judge who, after conducting the
3 administrative law hearing, will issue a written proposed board
4 decision. Then it's up to the board to either adopt or modify
5 or --

6 SENATOR CEDILLO: The last thing is, my staff is
7 very upset. He's just run a marathon. He wants to know how you
8 do on an ultra marathon.

9 [Laughter.]

10 MS. SHEK: There are three Ds. My secret are
11 three Ds, taught to me by Helen Kline, who's a world record
12 marathon runner. She's my coach and best friend.

13 The three Ds are: desire, dedication, and
14 discipline.

15 [Laughter.]

16 CHAIRMAN PERATA: Thank you.

17 SENATOR BOWEN: I'm stuck at that first one.

18 [Laughter.]

19 MS. SHEK: In fact, I recently completed a Los
20 Angeles marathon in your district, Senator Bowen.

21 CHAIRMAN PERATA: Well, you probably have things
22 to do. We should get you out of here.

23 Senator, did you have anything?

24 SENATOR ASHBURN: I just saw on television this
25 show about the ultra marathon in the Mojave Desert and Death
26 Valley area. That's in my district.

27 Have you ever run in that?

28 MS. SHEK: No, and I -- basically the first

1 element is lacking; I don't have the desire.

2 [Laughter.]

3 SENATOR ASHBURN: That's pretty grueling. I
4 guess petite women do better?

5 MS. SHEK: Yes, absolutely. The Death Valley
6 run --

7 SENATOR ASHBURN: As a petite man, I have no
8 chance at all.

9 [Laughter.]

10 MS. SHEK: Actually for the record, the Death
11 Valley run is 137 miles. You have 60 hours to complete it, so
12 it's very generous. It's a very generous cutoff.

13 SENATOR ASHBURN: Thank you.

14 CHAIRMAN PERATA: We have a motion by Senator
15 Cedillo.

16 Is there anybody here in support or opposition?

17 MR. LOW: Mr. Chairman and Members, Dave Low,
18 California School Employees Association.

19 Over 20 years ago, when I started in the labor
20 movement, I actually handled unfair labor practice charges
21 before PERB, have an appreciation of quality arbiters at that
22 body.

23 I don't know Ms. Shek personally, so I had to
24 contact our legal staff and labor reps to find out what their
25 opinion was of her. It was very consistent that she was an
26 experienced litigator, that she's a fair and impartial
27 adjudicator at PERB, that she studies the issues, understands
28 the law, and is very fair and impartial in her decisions.

1 So, we strongly support her confirmation.

2 CHAIRMAN PERATA: Thank you.

3 MS. CASTRO: Michelle Castro, Service Employees
4 International Union.

5 I know everyone's time is busy. Dave Low said
6 everything, and we strongly support Ms. Shek's appointment.

7 CHAIRMAN PERATA: Thank you.

8 MS. SANCHEZ: Libby Sanchez, law offices of Barry
9 Broad, representing the public sector wing of Laborers
10 International Union of North America, and IFPTE Local 21.

11 And I know better than ever to try and jump in
12 front of Michelle Castro.

13 I'm in strong support of Ms. Shek. Her record
14 speaks for itself.

15 CHAIRMAN PERATA: Thank you.

16 MS. WEI: Angie Wei on behalf of the California
17 Labor Federation.

18 We know that she's fair and impartial, and a
19 studious public servant. We support her.

20 CHAIRMAN PERATA: Thank you.

21 MS. BOUMA: Mr. Chair, Members of the Rules
22 Committee, Christy Bouma representing the California
23 Professional Firefighters.

24 We also support the confirmation of Ms. Shek.

25 CHAIRMAN PERATA: Thank you.

26 MS. O'HEARN: Good afternoon, Senator Perata and
27 Members of the Committee and staff.

28 My name is Barbara O'Hearn. I'm President of

1 Women Lawyers of Sacramento.

2 Women Lawyers of Sacramento is one of a number of
3 unity bar groups in the Sacramento area, and we are joined in
4 our support for Lilian Shek with the Wiley W. Manuel Bar
5 Association of Sacramento County.

6 We support Lilian's confirmation based on her
7 leadership qualities and her expertise in employment issues.
8 Her reputation in the legal community is one of fairness and
9 willingness to listen. We urge your confirmation.

10 Thank you very much.

11 CHAIRMAN PERATA: Thank you for being here.

12 The gentleman. You let all the women go first.

13 MR. GOLKA: Good afternoon, Mr. Chair. Joshua
14 Golka with the American Federation of State, County, and
15 Municipal Employees in support.

16 CHAIRMAN PERATA: Thank you.

17 Anyone in opposition? Seeing none, Secretary,
18 please call the roll.

19 SECRETARY WEBB: Ashburn?

20 SENATOR ASHBURN: Aye.

21 CHAIRMAN PERATA: I don't recognize you. Put
22 your hat on.

23 [Laughter.]

24 MR. NOVEY: Good afternoon, Mr. Chair and
25 Committee Members.

26 My name is Don Novey, state retarded [sic]
27 employee.

28 [Laughter.]

1 MR. NOVEY: This is a rarity for me. I'm
2 supporting a Berkeley grad at a committee hearing.

3 On the -- I over saw, serving as a former
4 permanent member of the CAUIB, many of Lilian's decisions, and I
5 consider her the consummate pro in her category in what she's
6 done in the past. I think she'll be an adequate, and open, and,
7 I think, pretty fair PERB member.

8 And I think the Governor will not get his way all
9 the time with reference to this lady.

10 Thank you.

11 CHAIRMAN PERATA: Thank you, Mr. Novey.

12 SECRETARY WEBB: Ashburn.

13 SENATOR ASHBURN: I don't know if that helped or
14 hurt.

15 [Laughter.]

16 SENATOR ASHBURN: I had already cast a vote,
17 which I'm reconsidering.

18 [Laughter.]

19 SENATOR ASHBURN: Aye.

20 SECRETARY WEBB: Ashburn Aye. Bowen.

21 SENATOR BOWEN: Aye.

22 SECRETARY WEBB: Bowen Aye. Cedillo.

23 SENATOR CEDILLO: Aye.

24 SECRETARY WEBB: Cedillo Aye. Battin.

25 SENATOR BATTIN: Aye.

26 SECRETARY WEBB: Battin Aye. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Five to zero.

1 CHAIRMAN PERATA: Congratulations.

2 MS. SHEK: Thank you. Thank you very much.

3 Chair Perata, may I have permission to introduce
4 my family.

5 CHAIRMAN PERATA: Oh, I'm sorry. I apologize.
6 Absolutely.

7 MS. SHEK: Thank you.

8 I would like to introduce my sister who came all
9 the way from San Francisco, Ms. Moira Shek.

10 CHAIRMAN PERATA: We've heard of San Francisco.
11 She's also taking pictures of you.

12 MS. SHEK: Yes.

13 And my husband, Superior Court of Sacramento
14 County, Judge Bernard Shepard, and our son, Vance Shek-Shepard.

15 CHAIRMAN PERATA: Welcome.

16 Congratulations.

17 MS. SHEK: Thank you very much.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 3:15 P.M.]

22 --ooOoo--
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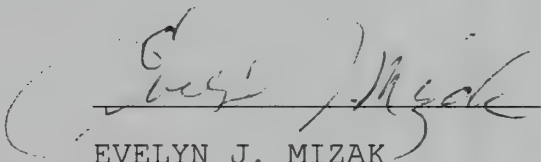
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of April, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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DEPARTMENT OF PERSONNEL ADMINISTRATION

OFFICE OF THE DIRECTOR
1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95814-7243



March 17, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Chairman Perata,

Attached are my responses to the questions you asked me to address in preparation for the Rules Committee confirmation hearing on my appointment.

Serving as director of DPA would be the culmination of my lifelong commitment to public service. I've been a state employee for more than 30 years, much of it as a rank-and-file employee. Not only do I hold great respect for the work we do, I want to use my position as director to help ensure state employees receive the respect and recognition we deserve. State government is a great career choice: I'm living proof.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Michael T. Navarro", is written over a horizontal line.

Michael T. Navarro
Director

Attachment

cc: Nettie Sabelhaus, Appointments Director, Senate Rules Committee

DEPARTMENT OF PERSONNEL ADMINISTRATION

OFFICE OF THE DIRECTOR

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95814-7243**Response to Confirmation Questions
from Senate Rules Committee****Michael T. Navarro****March 17, 2005****1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as director of the department?**

My goal is for DPA to be a customer-oriented human resource organization. That means focusing on the management needs of line departments. For example, DPA should support the workforce planning efforts of departments by conducting more comprehensive labor market surveys and devising a better way to keep the State's job classification plan up to date. DPA also must support management's need for flexibility and controlling costs.

In a similar vein, I want to bring more transparency to the collective bargaining process. For example, we're asking the Legislature to pass a bill (SB 890, Ashburn) to require legislative ratification of all side agreements that involve an expenditure of funds, which was not done in the past. We've also made it clear to departments that there won't be any secret deals; if agreements can't stand the light of day, we won't sign them. We will actively seek input from management of the departments to ensure we negotiate contracts that support their business needs.

As for bargaining itself, my goal is for DPA to negotiate successor agreements that help the State recruit and retain a quality workforce at a fair price. Despite the fiscal constraints we're facing that make this round of talks especially challenging, DPA is committed to engage in good faith bargaining.

2. The director of the Department of Personnel Administration is a voting member of the CalPERS Board. What do you view as your fiduciary duty as a board member?

I take my role as a member of the CalPERS Board very seriously. The fiduciary responsibilities I uphold are among the most significant trust and Constitutional responsibilities I am charged with as Director of DPA. My fiduciary responsibility is to provide a secure public pension for the membership by maximizing returns and avoiding unnecessary risk. To ensure the stability of the fund, I cast votes that will diversify investments and reduce volatility.

As a Board member, I also am responsible for ensuring that:

- all participants and their beneficiaries are provided with a secure public pension;
- services are delivered in a prompt and accurate manner;
- employer contributions are minimized; and
- the reasonable cost of administering the system is defrayed when possible.

3. How do you assess the actuarial information you receive as a Board member? Given the magnitude of recent stock market losses, what recommendation would you make regarding State contributions to the CalPERS fund?

I review this information along with DPA staff with expertise on pension benefits, investment assumptions, and health rate calculations. I contact the Board-appointed consultants to validate information related to investment return and risk. I also review current trends in public pension policy, investment management, and health coverage.

As for the State's contributions, at the recent CalPERS board meeting I voted in favor of the rate stabilization study. I believe we need to explore this concept as a way to reduce the volatility in the employer contribution rates. I also recommend a balance between State contributions for employees currently in the system and increased employee contributions. Employees will need to contribute a greater share, along with the State, to cover the recent enhanced pension benefits and the anticipated and inevitable rising cost of health care coverage. We can achieve this balance through good faith negotiation under the collective bargaining process.

4. The state is facing a significant wave of retirements, particularly in mid-management positions. What action should the state take to enhance recruitment and retention of employees? What role do pension benefits play in recruitment and retention? How do you assess the quality and sufficiency of state training efforts? How can DPA make training a priority given limited fiscal resources?

Any discussion of recruitment and retention issues should start by focusing on where we need to enhance our efforts, namely, what areas of our workforce are facing shortages. For the State, our data shows us it's the medical professions: nurses, doctors, pharmacists. Our challenge is greatest at the Department of Corrections, where court mandates require us to provide increased medical services.

I believe there are factors beyond just salary at play here. For example, our recent survey focusing on registered nurses shows that the State's overall compensation is reasonably competitive with the public sector labor market, with the exception of certain geographic areas. In fact, in the Central Valley, where our RN vacancy rate is 37 percent, State salaries are actually higher than in the surrounding jurisdictions. Statewide, we've added recruitment and retention differentials over the years, authorized hiring above minimums, and this Legislature even authorized a 5% pay raise last year for nurses. Yet these efforts have had little discernable effect on our overall recruitment.

It's more challenging for the State to recruit and retain personnel in the medical professions because we deal with the most difficult patients and clients – patients in State mental hospitals and clients in developmental centers, inmates and juvenile offenders in Corrections and Youth Authority. We could raise pay to extremely high levels to address the shortage – and maybe that would work – but I prefer a more creative approach to recruiting these personnel. For example, I've asked my staff to research proposals to "forgive" college tuition for newly graduated nurses and other medical professionals who agree to work for the State for five years. We're also

looking at expanded use of 20/20 programs¹ and significant "signing bonuses" for newly hired employees.

As for what role pension benefits play, the fact is I simply don't know how much weight this carries in our recruitment and retention efforts. To my knowledge, nobody has ever attempted to quantify the degree to which our retirement program affects a potential employee's decision to come work for the State, or a promising new employee to stay. I could speculate that for younger workers it's less of a factor than it may be for older, incumbent State employees, but whether it's more important than, say, health benefits or a flexible schedule, I have no basis for any conclusion.

What I will say is that we need to think beyond the traditional and look for creative ways to attract the "best and the brightest" to public service, and reward the high performers. I approach managerial compensation from this perspective. For example, I believe we should consider options such as allowing managers to take all their health benefit contributions as salary. Or giving high-performing managers incentives to stay, such as allowing them to trade vacation accrual for a semester of education-leave mid career to stay sharp and current in their profession, and in exchange gain their commitment to remain working for a while.

I also believe the State needs a more professional recruitment program. It makes no sense that it can take five to eight months to get a civil service exam scheduled, produce a list of eligible candidates, conduct interviews, and hire an employee. We need to work in close cooperation with the SPB and the line departments to expand on-site recruitment, testing, interviewing, and job offers at colleges and universities for such critical classifications as medical professionals, engineers, scientists, and other bright young men and women who will otherwise take entry-level jobs in the private sector.

We can and should do a better job of selling the opportunity to work in State government. State employment is challenging, exciting, and rewarding. No other employer offers a better opportunity to work in so many different jobs, in so many departments, even change professions and careers, and still keep the same employer. A person can start State employment as a clerical employee, attend an apprenticeship program to become an electrician, transfer to a personnel office to do classification work, attend law school at night – in many cases with some financial assistance from a department – be hired as an attorney, and eventually, if one is so inclined, promote to an upper-management position. California state government is rich with employees who have such a history. State employment is one of the best bets around. We need to sell it better as part of more professional recruitment efforts.

As for training our workforce, there's no question we need to do more. For budgetary reasons, I was forced to close our State Training Center. (It was funded entirely by reimbursements from departments that used its services; as departments cut training from their budgets, we no longer had funding to keep the center open.) However, I fully recognize that training will be essential as older workers retire and the State develops a new crop of leaders. We're looking to expand our partnership with CSU, Sacramento, and Cooperative Personnel Services, both of which stepped

¹ An example of a 20-20 program would be allowing an employee to attend nursing school for 20 hours/week, work for the State 20 hours/week, and receive full-time pay (i.e., for 40 hours/week).

in to fill the void left by the Training Center's closure. They continue to offer terrific courses for public-sector employees at a reasonable cost. In addition, DPA recently held a labor relations conference (using CHP's West Sacramento facility) that included training for labor relations staff in the operating departments.

5. The Legislature has expressed continuing concerns about the collective bargaining process. Based on your experience at DPA, what changes would you recommend to the state's collective bargaining statutes and/or process?

The collective bargaining process needs to be more transparent and avoid intruding on management prerogatives.

Regarding transparency, DPA has sponsored SB 890 by Senator Ashburn to make all "side letters" that commit to the expenditure of unbudgeted money subject to ratification just like the MOU proper. In the previous administration, many of the agreements included "most favored nations" language. These agreements were approved by the Legislature. Then out came "secret" side letters that gave some bargaining units compensation increases. SB 890 clarifies, in case there was any doubt, that the Legislature must approve any side letter agreement that enhances employee compensation.

My commitment to transparency is reinforced by another bill we're sponsoring, SB 1097 by Senator Dunn. It asks the Legislature to approve a "side agreement" negotiated by my staff with the Operating Engineers that provides for health benefit increases in exchange for the union relinquishing its claim for \$38 million in back pay awards from the Youth and Adult Correctional Agency, the result of a series of very negative arbitration decisions. As part of this side agreement, we also negotiated a change in the contract language to shield YACA from future liabilities by limiting the authority of future arbitrators to make such awards. Credit goes to Secretary Hickman of YACA, whose staff greatly assisted my labor relations staff in this effort.

Let me be clear: DPA will make no "secret deals" with any union. We will have frank discussions, bargain in good faith, explore alternatives. But when it comes time to execute an agreement, all the terms of the agreement will be presented to you, consistent with the Senate rule that requires a 7-legislative-day review period before an MOU bill can be taken up.

We also need to ensure management prerogatives are not compromised by bargaining. I can guarantee you that on my watch, this Administration will not abridge management prerogatives or otherwise undermine management flexibility.

6. Legislation passed in 2002 (AB 2477, Steinberg, Chapter 1044) created a task force, comprised of representatives from the administration and excluded employee organizations, to review the process for establishing compensation for excluded and exempt employees. In June 2004, the task force recommended that the state take immediate steps to alleviate the impact of salary compaction between supervisory employees and their rank-and-file subordinates. What has DPA done to address this issue? What will DPA do to address the salary compaction?

Salary compaction is one of the most serious issues affecting the State's ability to recruit and

retain qualified managers and supervisors. It discourages qualified State employees from pursuing supervisory and management promotions and demoralizes current supervisors and managers.

A good example of compaction is at the California Department of Forestry. As of July 2004, the Battalion Chiefs, who are rank-and-file employees in Unit 8, make 11.9 percent more than their immediate supervisors, the Assistant Chiefs. If no adjustments are made to the supervisory salary, the Battalion Chiefs will be making 23.7 percent more than the Assistant Chiefs by November 2005.

The Task Force created by AB 2477 recommended formation of a permanent commission to deal with management pay in general. However, it stopped short of identifying specific solutions or developing a plan of action to alleviate existing compaction problems. Meanwhile, rather than wait for a commission, in June 2004 DPA convened a group of 15 department representatives plus DPA staff to pick up where the Task Force left off. They've identified the occupations that need to be realigned and the specific job classes where the difference between supervisory and rank-and-file salary is less than 5 percent. The group also prioritized the compaction problems based on severity and received input from State departments and excluded employee organizations. DPA is using the information from the Task Force and the workgroup to develop a proposal to Finance that will begin addressing compaction, recruitment, and retention issues among excluded employees.

In the past, setting excluded employee compensation has been an afterthought – we made the decision once we concluded bargaining for rank and file. That will not be my approach. I believe in being proactive by demanding advance planning for excluded salaries so that we don't inadvertently create future compaction issues.

DEPARTMENT OF PERSONNEL ADMINISTRATION

OFFICE OF THE DIRECTOR

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95814-7243

March 21, 2005

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Perata:

This letter and enclosures are being sent to you as requested in your letter of March 8, 2005, in preparation for my scheduled confirmation hearing.

The enclosures include a statement of my short and long term goals for the Department of Personnel Administration while serving as the Deputy Director; and, an updated Form 700, Statement of Economic Interest.

Thank for the opportunity to provide the information and I look forward to the upcoming hearing.

If you have any questions regarding this material, please contact me at 322-5193.

Sincerely,

A handwritten signature in cursive script that reads 'William A. Avritt'.

William A. Avritt
Chief Deputy Director

WAA/tg

Enclosures (2)

DEPARTMENT OF PERSONNEL ADMINISTRATION

OFFICE OF THE DIRECTOR

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95814-7243**Statement of Short and Long Term Goals****William A. Avritt****Deputy Director, Department of Personnel Administration****March 21, 2005**

The functions of the Department of Personnel Administration (DPA) include the provision of services and acting as a regulatory agency. My goals as Deputy Director, DPA, attempt to address both functions and still provide a balance between the two.

Short term goals:

- Maintain smooth and efficient day-to-day operations of the Department.
- The continuation and improvement of good customer service.
- Delegate certain personnel functions to the state departments, thus providing state departments with the tools to complete their personnel activities in a timely and efficient manner.
- Direct staff to revise, revamp and/or update manuals, guidelines, classifications and policies that have a statewide impact on state departments.
- Work with our stakeholders to implement a strategic plan that provides future direction for DPA.
- Ensure a cooperative and ongoing working relationship with the State Personnel Board and other agencies, such as the Department of Finance and State Controllers Office.
- Provide staffing and assistance to the California Citizens Compensation Commission.

Long term goals:

- Ensure that the State classification plan is adhered to by departments through program reviews. Consultation and assistance to be provided when needed or requested.
- Identify human resources best practices and trends of State departments and share with all departments.

Short and Long Term Goals
William A. Avritt
Page 2

- Develop a total compensation package for excluded and exempt employees to address the compaction and recruitment and retention problems departments are facing.
- Provide DPA stakeholders with the best possible guidance and consultation services.
- Work within available resources to ensure adequate training for the State's workforce, including leadership training and succession planning.
- Renegotiate benefit contracts at a competitive price with the highest quality services.
- Enhance use of the Internet to provide access to DPA information, manuals and publications.

**DEPARTMENT OF PERSONNEL ADMINISTRATION****LEGAL DIVISION**

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95814-7243

March 21, 2005

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Perata:

This letter and enclosures are being sent to you as requested in your letter of March 8, 2005, in preparation for my scheduled confirmation hearing.

The enclosures include a statement of my short and long term goals for the Department of Personnel Administration, Legal Division, while serving as the Chief Counsel; and, an updated Form 700, Statement of Economic Interest.

Thank for the opportunity to provide the information and I look forward to the upcoming hearing.

If you have any questions regarding this material, please contact me at (916) 324-0489.

Sincerely,

A handwritten signature in black ink, appearing to read "K. William Curtis".

K. William Curtis
Chief Counsel

KWC/tg

Enclosures (2)

DEPARTMENT OF PERSONNEL ADMINISTRATION**LEGAL DIVISION**

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95814-7243

**Statement of Short and Long Term Goals**

K. William Curtis

Chief Counsel, Department of Personnel Administration

March 21, 2005

Government Code section 19815.6 authorizes the Chief Counsel of Department of Personnel Administration (DPA) to represent the State before any administrative agency or court of law in all legal matters in which DPA is interested.

Long Term Goals

- The Legal Division represents DPA, the Governor and other State agencies and departments in all labor relations matters and some employment and personnel matters. The Division's primary responsibility is to provide professional, cost-effective legal services to DPA staff and client departments which will be continued and enhanced.
- The Legal Division will continue to provide the full range of legal services that a private law office, specializing in labor relations and employment law, would provide to any government entity client.
- In addition to traditional representation, the Legal Division will offer proactive legal services to its clients. Such services will include legal consultation and advice, document review, formal legal opinions, and training.

Short Term Goals

- The Legal Division will continue to actively encourage departments to seek "preventive legal advice" to reduce legal pitfalls from the onset. For example, an hour or so of attorney review of a notice of adverse action will save future personnel and attorney time. This type of proactive service directly translates to a cost savings of tax dollars.
- The Legal Division has an ongoing internal automation project to assist litigation preparation activities and to provide client departments with up-to-date resources, legal information, and advisory opinions. These include establishing data bases for arbitration and SPB Decisions, client newsletters, a points and authorities brief bank, CD ROM legal research capabilities, "on the road" computer software and equipment, and an electronic legal calendaring and docketing system.

State of California

PUBLIC EMPLOYMENT RELATIONS BOARD

Board Office

M E M O R A N D U M

1031 18th Street, Board Suite 202
Sacramento, CA 95814-4174

DATE: March 24, 2005

TO : California Senate Rules Committee

FROM : Lilian S. Shek, Board Member

SUBJECT : Statement of Goals for Public Employment Relations Board

I was appointed to the Public Employment Relations Board (PERB) on November 15, 2004. PERB is a quasi-judicial administrative agency charged with administering the collective bargaining statutes covering employees of California's public schools, colleges, and universities, employees of the State of California, employees of California local public agencies (cities, counties and special districts), trial court employees and supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

The following is a list of my short and long term goals.

1. **I have accomplished my short term goal of learning the law and policy governing public labor-management relations.** Since my appointment, I have immersed myself in the study of the statutes, regulations, PERB decisions, and case law that are pertinent to the exercise of my duties as a Board member. My understanding of PERB's jurisdiction allows me to actively participate in the adjudicatory function of the Board.
2. **My first long term goal is to ensure that the collective bargaining statutes are administered in accordance with the letter and spirit of the law.** As a former administrative law judge for the Unemployment Insurance Appeals Board, I used due diligence in examining the facts of each case, applying the law to the facts, and reaching a fair and reasonable conclusion. As a Board Member, I have adhered to the same principles of integrity and work ethics in adjudicating disputes between the employers, employees, and labor organizations.
3. **My second long term goal is to allocate PERB resources properly to provide timely and effective resolutions of unfair labor practice charges, through investigation, settlement and mediation, administrative law hearings, and issuance of well-reasoned, and well-written Board decisions.** Our constituents need guidance on how to comply with the collective bargaining laws, and avoid conflicts and labor disputes.
4. **My third long term goal is to continue improving PERB's caseload management to facilitate prompt adjudication of labor disputes.** We have been successful in resolving disputes and reducing the Board's docket by 50% in the last 12-month period.
5. **My fourth long term goal is to provide our constituent groups with PERB's latest decisions and resources, to enhance their utilization of PERB's dispute resolution process.** PERB recently upgraded its website to allow public access to Board decisions, regulation updates and other legal and procedural resources.

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt, \quad (1)$$

where x is a real number. It is shown that the function $f(x)$ is continuous and differentiable on the whole real line. The derivative of the function is found to be $f'(x) = \frac{1}{1+x^2}$. It is also shown that the function $f(x)$ is bounded on the whole real line, and its range is the interval $(0, \frac{\pi}{2})$.

2. In the second part of the paper, the properties of the function $f(x)$ are studied in more detail. It is shown that the function $f(x)$ is concave down on the whole real line. It is also shown that the function $f(x)$ has a horizontal asymptote at $y = \frac{\pi}{2}$ as $x \rightarrow \pm\infty$. The function $f(x)$ is also shown to be a solution of the differential equation $y' = \frac{1}{1+x^2}$ with the initial condition $y(0) = 0$.

3. In the third part of the paper, the function $f(x)$ is compared with the function $\arctan x$. It is shown that the function $f(x)$ is identical to the function $\arctan x$ on the whole real line. This is done by showing that both functions satisfy the same differential equation and the same initial condition.

4. In the fourth part of the paper, the function $f(x)$ is used to define a new function $g(x)$ by the equation $g(x) = f(x) - \arctan x$. It is shown that the function $g(x)$ is identically zero on the whole real line. This is done by showing that $g(x)$ satisfies the differential equation $y' = 0$ and the initial condition $y(0) = 0$.

5. In the fifth part of the paper, the function $f(x)$ is used to define a new function $h(x)$ by the equation $h(x) = f(x) - \frac{\pi}{2}$. It is shown that the function $h(x)$ is an odd function, i.e., $h(-x) = -h(x)$. This is done by showing that $h(x)$ satisfies the differential equation $y' = \frac{1}{1+x^2}$ and the initial condition $y(0) = -\frac{\pi}{2}$.

507-R

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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

JEFFREY M. DAVI
Real Estate Commissioner

SENATOR JEFF DENHAM

SENATOR ABEL MALDONADO

BENITA D. HALEY, Member
Board of Governors
California Community Colleges

ARNOLD BRAY
School Services of California

CARLTON D. MOORE
Oil Spill Response Administrator

1 GREG HURNER, Deputy Director
California Department of Fish and Game

2 ROSARIO MARIN, Member
3 California Integrated Waste Management Board

4 SENATOR RICHARD POLANCO

5 JOSH PANE
6 California Refuse Removal Council

7 YVONNE HUNTER
8 League of California Cities

9 MARC APREA
Republic Services, Incorporated

10 CHUCK HELGET
11 Allied Waste and Browning-Ferris Industries

12 MARK MURRAY
13 Californians Against Waste

14 BILL MAGAVERN
Sierra Club California

15 ROSALIE MULE, Member
16 California Integrated Waste Management Board

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25		
26		
27		
28		

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have a quorum.

We have a number of appointees today. I apologize for being a little late. We'll more than make up for it.

We're going to go in alphabetical order, beginning with Jeff Davi, if you'd like to come forward and introduce yourself.

SENATOR DENHAM: I just --

CHAIRMAN PERATA: Give your name for the record.

SENATOR DENHAM: Senator Jeff Denham.

I want to enthusiastically support Jeff Davi. He's a close personal friend, I know him from a professional standpoint as well. He's been my realtor. As well, he's been very active in the community. He was President of the Affordable Housing Corporation of Monterey County. He's somebody that gives back in many ways.

I wholeheartedly support his nomination.

SENATOR MALDONADO: Jeff Davi is not my realtor.

Mr. Chair and Members, I just want to say just a few brief words about Jeff. I've known him for quite sometime. He's always someone willing to do his best for his clients, and I think he'll do that for the people of California. I think Governor Schwarzenegger has done a fantastic job of nominating Jeff, because I have no doubt that he will serve the people of California with honor, with dignity, and with integrity as the next Commissioner of Real Estate for the people of California.

1 Since I've known him, he's always been very eager
2 and willing to listen to all involved, regardless of the party
3 affiliation, to see that the people are represented in the best
4 way as possible. I know that he will bring the same sense of
5 working, sense that he's brought forward in the past to this
6 job.

7 He's a graduate of St. Mary's College in Moraga.
8 I won't hold that against him, but at the end of the day,
9 Mr. Chair and Members, Jeff has done a fabulous job as a
10 businessman, as a real estate broker, as a family man, as a
11 community man, as someone who I think will do a fabulous job for
12 the people of California.

13 Thank you, Mr. Chair.

14 CHAIRMAN PERATA: Thank you, Senator.

15 Mr. Davi, welcome.

16 MR. DAVI: Thank you, Chairman Perata. Thank
17 you, Members, thank you.

18 I make a brief statement now?

19 CHAIRMAN PERATA: Absolutely.

20 MR. DAVI: I want to thank the Members of the
21 Legislature that are from my home town for being here today and
22 introducing me. I appreciate that. Simon Salinas, the
23 Honorable Simon Salinas was going to be here as well but he's
24 chairing another committee. But I do want to thank him for the
25 offer.

26 I appreciate the opportunity to be here. I've
27 been in position now for about six months at the department,
28 awaiting confirmation, but have had an opportunity to do an

1 extensive outreach with industry, and with consumers, and with
2 the staff and the offices. I have found that the department is
3 in good shape, but as any department, it can always be improved.

4 You have my statement of goals that I submitted.
5 I don't want to repeat every one of those, but basically just
6 say that I believe my experience in the real estate industry,
7 diverse as commercial, residential, sales, leasing, and property
8 management, as well as my experience as a mortgage broker when I
9 first got into the business, and having grown up in real estate
10 my entire life, prepares me and brings the tools that I need for
11 this position.

12 I again appreciate the opportunity and look
13 forward to your questions.

14 CHAIRMAN PERATA: Thank you very much.

15 Members, any questions for the Commissioner?

16 SENATOR BATTIN: Move his confirmation.

17 CHAIRMAN PERATA: Motion to approve.

18 Do you have family here?

19 MR. DAVI: Not here today, no, thank you.

20 CHAIRMAN PERATA: Is there anybody here who would
21 like to speak in favor of the nominee? Seeing none, anybody
22 opposed?

23 Seeing none, I would just like to say that I
24 have, in addition to the two Senators who have been here, I have
25 what I would consider, considering your part of the world, an
26 enormous number of friends who are acquaintances of yours, who
27 have worked with you, who are friends of yours, and your
28 recommendation and the work that you've done for the last six

1 months come highly recommended.

2 I think this is another in a line of very good,
3 solid appointments by the Governor. I congratulate you, and I
4 hope that in your professional capacity, if problems come up, or
5 things that you believe should be changed legislatively, or any
6 issues that you'd like us to look at as part of our oversight
7 function, that you will call upon us to do so.

8 MR. DAVI: Thank you, and I will.

9 CHAIRMAN PERATA: With that, call the roll,
10 please.

11 SECRETARY WEBB: Bowen.

12 SENATOR BOWEN: Aye.

13 SECRETARY WEBB: Bowen Aye. Cedillo.

14 SENATOR CEDILLO: Aye.

15 SECRETARY WEBB: Cedillo Aye. Battin.

16 SENATOR BATTIN: Aye.

17 SECRETARY WEBB: Battin Aye. Perata.

18 CHAIRMAN PERATA: Aye.

19 SECRETARY WEBB: Perata Aye. Four to zero.

20 CHAIRMAN PERATA: Thank you very much.

21 MR. DAVI: Thank you so much.

22 [Thereafter, SENATOR ASHBURN
23 voted Aye, making the final
24 vote 5-0 for confirmation.]

25 CHAIRMAN PERATA: Benita Haley, Member,
26 California Community Colleges, Board of Governors.

27 Make yourself comfortable. You may chat with us
28 whenever you'd like.

1 MS. HALEY: Thank you for the invitation, and
2 thank you, Senator Bowen. She's my Senator from where I live.

3 I'm pleased to be here. I hopefully will answer
4 the questions that you put to me. I know you've had at least a
5 review of questions that were given to me by the staff.

6 And I guess we just proceed.

7 CHAIRMAN PERATA: Fair enough.

8 MS. HALEY: Would you like to know about me?

9 CHAIRMAN PERATA: No, we've got plenty of what
10 you submitted. We'll go to the questions. That's the way we
11 like to do business.

12 Members?

13 One question I wanted to ask is one that we've
14 asked other members. We have a very dire need for specific
15 training, for example, with nurses in our community college
16 system.

17 What kind of interrelationship with the working
18 relationship of the State Board, with the various local
19 community college boards on specific things, like nursing? Do
20 you get involved? If so, what's your practice and policy?

21 MS. HALEY: Well, me personally or as a board
22 member. Personally, I've had a lot of experience and background
23 at the community colleges with programs. I was a vice
24 president of a college for 25 years, and actually represented as
25 a counselor the nurses and all the vocational people at the
26 time.

27 I happen to think that in regard to the programs
28 that are of that nature at the community college we ought to be

1 doing more regional planning. And I think that it -- it's been
2 talked about before, but we haven't gotten very far.

3 I think the time is probably very ripe for it to
4 be moved and pushed again. The triple-C T, the Trustees'
5 organization, would be very instrumental and very helpful in
6 helping the Board of Governors not get in their way at the same
7 time. That would be a good way for us to go with programs like
8 that.

9 CHAIRMAN PERATA: You've also mentioned in your
10 statement of goals that you felt that the fees should be sort of
11 predictable.

12 MS. HALEY: Yes. I just think we have to have
13 some kind of a plan afoot.

14 Excuse me. I've been nursing a bronchial
15 infection.

16 We have to have some kind of plan afoot so that
17 it's not a shock to the students and a shock to us at the
18 community college district level and at the board level.

19 CHAIRMAN PERATA: Talk a little bit about, there
20 are students who are eligible to have their fees paid.

21 MS. HALEY: Waivers, right.

22 CHAIRMAN PERATA: Are you satisfied with the
23 level of outreach that exists today in the state pursuant to
24 that?

25 MS. HALEY: I can't really respond to that
26 because I haven't been out and around in the districts for quite
27 awhile.

28 But I believe that the districts individually

1 have come a long way in terms of setting up ways for students
2 when they come in to get caught and get in the right direction.

3 Part of the problem, I think, that happens with
4 information to students that come in and think, "Oh, I can't
5 make this fee; it's too high," is that the physical structure of
6 admission, then they may have to go over to another building.
7 If they're a brand-new student, we're just happy that they're
8 there and not fouled up. So, we're going to send them --

9 CHAIRMAN PERATA: It's kind of like here.

10 [Laughter.]

11 MS. HALEY: -- send them to another place, and to
12 another place.

13 And so, the districts that have narrowed that
14 process down and have improved that, because with -- another hat
15 that I had was, I did have my own business for ten years with
16 just the community colleges as a consultant. And I was able to
17 see that happening in a number of the districts.

18 CHAIRMAN PERATA: Thank you.

19 Any questions from other Members? Senator Bowen.

20 SENATOR BOWEN: Thank you.

21 Welcome. It's nice to see you here.

22 MS. HALEY: Thank you.

23 SENATOR BOWEN: May you get rid of whatever that
24 is quickly, but keep it to yourself.

25 MS. HALEY: Yes, please. I want you to know I'm
26 not germy.

27 SENATOR BOWEN: I'd like to just raise an issue
28 that's not discussed here, because it's one that's come up

1 recently, but I'm going to be adding it to my list of things to
2 talk to appointees about.

3 The administration has recently stopped charging
4 a convenience fee for people who register their vehicles on line
5 because it reduces the lines at the Department of Motor
6 Vehicles, and it's actually cheaper for the state to process a
7 credit card than a check or cash.

8 By contrast, some of the CSU campuses are now
9 adding a two-and-a-half percent surcharge to students who pay by
10 credit card.

11 I don't expect you to have the answers today, but
12 I'd like to engage in a discussion with the community colleges
13 about their policy for accepting credit cards and payment; how
14 it effects students' ability to register on line.

15 One of the things that happens is, if there is a
16 credit card surcharge, is that people will go through 90 percent
17 of the process of registering on line, then find out it's going
18 to cost more and abandon the process, and physically show up
19 some place where they don't have to pay the surcharge.

20 So again, this was not on your list, but I'm very
21 concerned that those students who are most like to use credit
22 cards are those who are not in the financial situation to just
23 pay the full amount of the fees.

24 MS. HALEY: Right.

25 SENATOR BOWEN: In other words, folks who are
26 making a million dollars a year, you're not worried about the
27 credit card surcharge or how it's handled. But if you're
28 spreading out cost of your fees and books, and so forth, and

1 scrambling to make your minimum payments the two-and-a-half
2 percent is potentially a big deal.

3 So, I look forward to talking to you and other
4 community college board trustees about that.

5 MS. HALEY: Thank you. I can't respond to it
6 because I don't know what we're doing at this point, or if it is
7 district by district.

8 But we have just strongly encouraged people to
9 register on line. I mean, that's what we don't want, are lines.

10 SENATOR BOWEN: I presume it costs more to have
11 lines?

12 MS. HALEY: Oh, you bet it does. It really
13 does.

14 Thank you. I'll find out for me, too. Thank
15 you, Senator.

16 CHAIRMAN PERATA: Any other questions?

17 Do you have family here?

18 MS. HALEY: No family, but I have a very good
19 friend.

20 CHAIRMAN PERATA: That's good enough.

21 Hello, good friend. Welcome.

22 MR. BRAY: Thank you Senator, Members.

23 My name is Arnold Bray. I'm with School Services
24 of California, but I have worked with Ms. Haley for the past 20
25 years on community college issues in my service also to Santa
26 Monica Community College District, where she was a staff member
27 for quite a few years.

28 I think she will obviously make an excellent

1 board member. She knows the fiscal issues; she knows the policy
2 issues, and she's very in tune to students in this state, which
3 is what the community colleges are all about. I think we look
4 forward to your recommendation of her.

5 CHAIRMAN PERATA: Anyone else like to come forth
6 in opposition?

7 Seeing none, we have a motion to approve by
8 Senator Battin. Secretary, call the roll, please.

9 SECRETARY WEBB: Ashburn.

10 SENATOR ASHBURN: Aye.

11 SECRETARY WEBB: Ashburn Aye. Bowen.

12 SENATOR BOWEN: Aye.

13 SECRETARY WEBB: Bowen Aye. Cedillo.

14 SENATOR CEDILLO: Aye.

15 SECRETARY WEBB: Cedillo Aye. Battin.

16 SENATOR BATTIN: Aye.

17 SECRETARY WEBB: Battin Aye. Perata.

18 CHAIRMAN PERATA: Aye.

19 SECRETARY WEBB: Perata Aye. Five to zero.

20 CHAIRMAN PERATA: Congratulations.

21 MS. HALEY: Thank you very much. I appreciate
22 it.

23 CHAIRMAN PERATA: Next, Mr. Carlton Moore, Oil
24 Spill Response Administrator.

25 I don't think I'd ever know we had one if it
26 hadn't been for today. Welcome.

27 MR. MOORE: Mr. Chairman, Members, good
28 afternoon. Thank you for the opportunity to be with you today.

1 I had nothing in the way of prepared remarks, but
2 I'd kind of like to give you a couple more nuggets that might
3 not be self-evident by the material that we forwarded to the
4 Committee.

5 The Office of Spill Prevention and Response is a
6 creature of the California Legislature subsequent to the passage
7 of the Lempert-Keene-Seastrand Oil Spill Prevention Response
8 Act. That was second to a federal act called the Oil Pollution
9 Act, which really, I guess a momentous event, was on March 24th
10 of 1989, when the lookout on the Exxon Valdez reported the Bligh
11 Reef light off of the starboard bow instead of the port bow.
12 Exxon Valdez ran up hard on Bligh Reef, 260,000 barrels, oiling
13 about 1,000 miles of coastline in Alaska.

14 The Congress instantly passed the Oil Pollution
15 Act of 1990, feeling that the Coast Guard at that time had to
16 upgrade its response capability. And as indicated by some of
17 the material that was sent through, I've had about three decades
18 of service with the Coast Guard in both active and reserve. At
19 that particular time I was looking for a large unit to command.
20 I had command of two small units. It's defined as small units
21 less than 50; something over 50's a large unit.

22 And the Commandant came in and said, "We need to
23 have some sort of search capabilities so we can respond to
24 catastrophic oil spills, and it has to be available on-call on a
25 24/7 basis, and we'd like to have you respond within six hours
26 to any coast, doesn't matter." So, they picked the Salt Lake
27 Unit, a pretty large unit. It had about 90 enlisted and about
28 seven officers. And I was lucky to be selected for that, and

1 had that command for four years.

2 The importance of that, and I bring to you today
3 the fact that we were heavily, heavily, heavily involved in
4 program development. These were uncharted waters. We weren't
5 quite sure what spill response organization we were going to
6 adopt, very embryonic stages of something called ICFC Instant
7 Command System, which is now used internationally, developed in
8 part for oil spills right here in California.

9 And so, it required me not only through program
10 development to learn the language, speak and understand response
11 to catastrophic spills, but it was about the same time I came
12 into the Office of Spill Prevention Response in 1992. I won't
13 tell you that we stole shamelessly from the federal government,
14 but we have a lot of similar programs, and in fact we did
15 leverage off of their best practices.

16 So from that, really the basis for what you have
17 today and a lot of the programs that we have today implemented,
18 proven to work, have grown up over a period of time, and I was
19 able to use that chunk of my time in the reserves and export
20 some of that into state service.

21 Secondly, very, very quickly, since its
22 inception, gosh, I think we started out with 88 people, we're
23 about 203 right now, we've had a substantial amount of mission
24 creep. I came into the job because I speak and understand
25 tankers and shipping, and it's just an affinity that I have.
26 And that's only one segment of our oil spill program.

27 The focus initially was on marine transportation.
28 We're funded from a per barrel fee that comes in over the water

1 that's mostly by tanker.

2 However, the prevention measures that we've
3 instituted, both either through regulation or voluntary
4 cooperation by the oil shipping industry, has actually had a
5 dramatic effect in a nose dive in our statistics, to the point
6 that we're about a third of what they were in the early '90s,
7 both by frequency and by volume of spills.

8 That's not to say we don't have problems, but
9 there has been mission creep because in 1996, we took by
10 delegation response to pollution for all of inland California.
11 Heretofore, our part of that was only marine. So now the Office
12 of Spill Prevention Response has all inland pollution response,
13 and it's not just oil.

14 You may remember the train wreck up by Dunsmuir,
15 Cantera Loop, put a tanker of something called metam sodium into
16 the water. That's a herbicide. We had responded to that. And
17 we would continue to respond to those types of incidents.

18 And we were at Metro Link when those types of
19 things happened. We have a response capability, and we are
20 there.

21 And in 19 -- I'm sorry -- in the year 2002, the
22 Legislature decided after looking at historically what it is
23 that's polluting the waters -- is it really tankers or tank
24 vessels -- no, the large amounts that are coming from ships are
25 ships carrying other cargoes, dry cargo. Major accident
26 involving an oil spill in Humboldt Bay with the vessel Kure was
27 a wood chip carrier. Tied up at Simpson Dock when it happened.
28 These ships carry millions of gallons of heavy crude -- not

1 heavy -- bunker oil, which is highly toxic, very persistent, and
2 looks like crude oil.

3 So in 2002, the Legislature through SB 849 gave
4 us essentially the balance of the deep draft fleet that visits
5 California ports.

6 And that's a heavy lift. It was an additional
7 1200 response plans that we had to review. We have to test, and
8 exercise, and drill these folks for responses, and we do that.
9 Right now I think on the shelf we have in excess, if you count
10 tankers, tank barges, pipelines, marine facilities, marine
11 terminals, and the deep draft vessels, we probably have in
12 excess of 2,000 plans on our shelves.

13 So, there's been a lot of mission creep, and
14 we're looking at new things over the horizon, the LNG carriers,
15 cruise ships.

16 And lastly, let me close by saying that, and a
17 lot of times I give nice Power Point presentations, and I try to
18 stress the fact that we're 24/7. In fact, we are. And you can
19 say, well okay, so is the Highway Patrol, so is OES. And
20 there's a big difference here. We've got 203 people, about a
21 third of them are on pagers at any given time. We don't have
22 ships. Of the 203 people, about 180 of them have second jobs
23 during spill response, and we call them in the middle of the
24 night. And don't you know, most of our spills are in the middle
25 of the night. In the past decade, we've gone two Christmas Eves
26 in the field as opposed to being with family.

27 And so, I'd kind of like to close with a little
28 bit of philosophy on what I have for leadership. I see my job

1 as required. We're supposed to provide a training ready
2 resource to respond to catastrophic events. Not just oil but it
3 happens to be mostly oil.

4 I see my job is to resource my people, provide
5 the training that's necessary and required in some cases by
6 statute, and motivate. My biggest fear is loss of people
7 through retention. Well, the fact of the matter is, we've only
8 got one vacancy right now and we hope to fill that next week.
9 My biggest problem with retention, people for some reason want
10 to retire. We could have kind of a corporate culture at OSPR,
11 that's what we call ourselves, that makes people want to get in
12 the car in the morning and turn the key over and drive to work.
13 By doing that, we get motivated and very productive people that
14 are willing to get up in the middle of the night to go out on a
15 spill response.

16 And subject to your questions, that's about all I
17 have to say.

18 CHAIRMAN PERATA: You said 180 of these people
19 have day jobs?

20 MR. MOORE: Sir, 203 have day jobs, and about 185
21 -- 180 identified in what we call the ICS Spill Response
22 Organization. So, if we had a catastrophic spill, we would
23 actually mobilize those folks.

24 CHAIRMAN PERATA: But they work for the agency?

25 MR. MOORE: They work Monday through Friday at
26 the agency. A good example, we have wardens, we have Fish and
27 Game wardens, 28 sworn officers with us. They do environmental
28 crimes enforcement. Recently they were referred to as the Gold

1 Standard for environmental crimes enforcement and prosecutions.
2 That's Monday through Friday.

3 If a spill happens on a Saturday they'll -- one
4 of my wardens will become my incident commander, and he will run
5 -- he or she will run that particular response and delegated
6 authority that I have.

7 We have two incident commands going right now.
8 We've got a huge pipeline spill that put 3,000 barrels of San
9 Joaquin Valley crude in Pyramid Lake, which is right off of I-5
10 when you're going up the Grapevine. And we've got another one,
11 over the weekend we had the search people up to Donner Lake.
12 Kinder Morgan had a gasoline pipeline that feeds Reno-Sparks.
13 We shut it down for three days. It's just been replaced and
14 back in service today.

15 But to give you an idea, as a matter of fact, in
16 preparation for the meeting, this morning the pager goes off.
17 We had a tug boat sink in -- and you might see it in the news
18 here today -- loss of life, but we do respond to those things.

19 So, it's just a myriad of things. We've always
20 got something going on, but right now we do have two incident
21 commands, and those are headed by wardens that are not doing
22 environmental crimes enforcement when they're in spill response.

23 CHAIRMAN PERATA: Do you coordinate with Coast
24 Guard, Haz Mat, those kinds of folks?

25 MR. MOORE: We do. As a matter of fact, we have
26 a cooperative training. We do this all the time.

27 We also have a cooperative spill agreement. In
28 April of last year, we had the largest oil spill exercise in the

1 nation, involving federal, state and local agencies, as well as
2 the government of Mexico. It was held in Los Angeles-Long Beach
3 area as well as San Diego. About 2,100 hundred people involved
4 in this. So, we coordinate with them.

5 And by the way, we work with them very, very
6 well. And we exercise. It's not just to say we do this. We
7 actually go out and exercise with them, and then we respond in
8 many, many cases in spills with them. It works very well.

9 CHAIRMAN PERATA: You would be in a position to
10 have an opinion on this at least, most of our infrastructure in
11 this state is aging or aged. How would you assess the whole
12 pipeline safety bit?

13 MR. MOORE: We've had this discussion.

14 I guess if I were to leave a sound bite with you,
15 we track a lot of statistics. And it's not that statistics
16 always mean everything, but it's kind of our measurement of
17 success or failure.

18 I mentioned that tankers and tank barges have
19 taken a nose dive statistically. They've pretty much been
20 replaced by pipelines to the extent, and the sound bite today is
21 that the greatest source of petroleum in the environment right
22 now is from pipelines. And there's a reason for that.

23 And then one more sound bite. Your greatest --
24 your largest pipeline operator in California is a company called
25 Kinder Morgan out of Galveston, a large company. They were not
26 a player in 1998 in California.

27 They came up to California and bought a lot of
28 aging pipelines that a lot of the pipeline operators were glad

1 to get rid of because they knew there was tremendous capital
2 investment necessary. And Kinder Morgan's had a lot of
3 pipelines break lately. As a matter of fact, we've had a major
4 one about year ago in Suisun Marsh. Put 126,000 gallons of
5 Number Two diesel in.

6 They are scrambling with aging infrastructure,
7 trying to keep that going and not breaking and not polluting.
8 At the same time, they've got a long-term view for capital
9 investment and pipeline replacement. Until that happens,
10 California is in a situation where many of the pipelines are
11 reaching the end of their life cycle. And so, we are having a
12 continual problem with that.

13 I just indicated the two incident commands we got
14 going right now. Both of them are pipelines.

15 We have met with -- and by the way, they're not
16 the only player in town. There is probably another 26 pipeline
17 operators. And we are, on an individual basis, trying to meet
18 with those folks and share best practices that we have picked
19 out from the marine sector, marine oil transportation sector.
20 And secondly, get them to communicate with us so that we can be
21 on the spot and responsive the minute something happens.

22 And, you know, we're getting a high degree of
23 cooperation. There's a lot of work to be done. That's a heavy
24 lift, because there are a lot of old pipelines in California.

25 CHAIRMAN PERATA: Do you have the ability to shut
26 one down if you believe it's a hazard?

27 MR. MOORE: Well, I'll just tell you one story,
28 and this is not a good story, at least from my perspective.

1 I met with the Regional Vice President of Kinder
2 Morgan. Kinder Morgan owns the most mileage in California. The
3 Regional Vice President -- regional corporate headquarters are
4 in Orange. And right before we started the meeting, he kind of
5 patted me on the shoulder. He says, "Hey, Carl, you've got to
6 know that I got your number, your home number, on my speed dial
7 on my cell phone."

8 I said, "That's not a good sign," and for a whole
9 bunch of reasons. Number one, it's indicative that they've got
10 a problem, that they've got a lot of spills. And number two,
11 that outside of communication, it's not just having a number on
12 the phone; they've got to take proactive steps in prevention.

13 That meeting was very, very successful. One of
14 the things that came out of that meeting was a better
15 understanding that we can work together to give them free advice
16 on prevention measures. And number two, change your response
17 protocols. There was an instance where they thought they had a
18 spill -- I'm sorry -- they thought they had a break in the
19 pipeline. They shut the pipeline down. They were not able to
20 find the pipeline, and they repressured.

21 They don't do that any more. As a matter of
22 fact, they will bring a pipeline down. Most of the time they
23 bring it down even if they suspect something, and they'll call
24 me just to say the pipeline's down, not that they have a spill.
25 They'll call to say, "We've shut down a pipeline." They did
26 that with Donner. We don't know what we've got; shut it down.

27 But conversely, by agreement, if we think that
28 we've got a catastrophic thing, we will shut the pipeline down.

1 Kinder Morgan had a pipeline spill in Alameda in
2 February. They denied for two days it was their pipeline. Our
3 GIS said it was. We instituted a call-back and said, "Shut it
4 down. See what happens, and then we'll call you back later."
5 In fact, they did. They showed up and then they took
6 responsibility for the pipeline. That's just one operator,
7 though.

8 VintageEra, which had a lot of land movement on
9 the coast, the pipeline break at Pyramid was a slope failure.
10 Half a mountain took a chunk of pipeline out. But VintageEra
11 now, on the pipeline that is under my jurisdiction along the
12 coast because it could impact the marine waters, they're
13 shutting those things down when they get any kind of land
14 movement whatsoever. They shut it down if their sensors go off
15 and say we've got a pressure loss. And they'll send people out
16 on foot to walk the pipeline to, in fact, find out if there's a
17 break.

18 So, if I told you that things are much better,
19 that's probably wrong. But I can tell you they're getting much
20 better, and the pipeline industry is starting to listen, and
21 starting to seriously look at prevention measures to better
22 their track record.

23 CHAIRMAN PERATA: Thank you.

24 Questions?

25 SENATOR BOWEN: Actually, I do have a few
26 questions.

27 It seems like our mike system is the lower than
28 normal.

1 The nickel a barrel, is it enough for you to do
2 what needs to be done? It hasn't been changed in a long time.
3 Certainly the cost of most everything has gone up during that
4 period.

5 MR. MOORE: Well, I sure wouldn't want anyone to
6 leave the room thinking that we're flush with money, but to
7 answer your question, in all honesty, we're okay.

8 We have two funds that we administer. One is the
9 nickel a barrel fund that you're talking about that allows us to
10 operate.

11 And a funny thing has happened. When we go out
12 on a spill response, we bill our time back to another fund. So,
13 we're set up on the nickel a barrel fund as if there are no
14 spills that happen, and everybody works Monday through Friday,
15 and that's going to be the cost of our personnel.

16 In fact, that's not what happens. We actually
17 bill the Response Trust Fund, which in turn bills the
18 responsible party.

19 So, I don't want you to leave thinking we've got
20 a big surplus. That's not the case. But we're fine. We're
21 okay.

22 SENATOR BOWEN: What should we be thinking about
23 as we contemplate siting LNG facilities, particularly in areas
24 that are near significant population centers?

25 MR. MOORE: Like Long Beach.

26 SENATOR BOWEN: Like Long Beach.

27 MR. MOORE: You know, I get to dodge that
28 question, and I'll tell you why.

1 I do the ships, okay? There are other folks that
2 -- as a matter of fact, the State Lands Commission has
3 regulatory authority as it relates to marine terminals, and they
4 are looking at the regulation of on-shore marine terminals that
5 are going to be regasification facilities for LNG.

6 Now I can tell you, and I'm just being silly
7 here, but I can tell you that we've had a lot of discussion, and
8 both Secretary Tamminen and Secretary Chrisman want harbor
9 safety, about what happens when you bring an LNG ship into Long
10 Beach.

11 SENATOR BOWEN: You have sail boats going in and
12 the out of there. They don't have the right-of-way, but --

13 MR. MOORE: No, and you've got a whole lot of
14 other things, too. I mean, you've got a lot of deep traffic in
15 there.

16 Keep in mind that the port complex, LA-LB, is the
17 third largest port complex in the world. It is the highest
18 volume complex in the United States. A lot of ship traffic.

19 Now that I've said that, we've become very, very
20 sophisticated for inter-harbor transits as well as approaches.
21 There's a vessel traffic system down there that controls and
22 routes ships. They now have AIS capability, which is similar to
23 transponders. We theoretically -- we don't do this -- but we
24 theoretically can bring a ship in, zero vis, all the way to the
25 dock. It's that good. And we regulate the marine pilots that
26 actually command the ships as they come in from the sea buoy.

27 So, from that standpoint -- oh, and one more
28 thing. We did look at LNG. We're already bringing in

1 pressurized propane into Long Beach, and that's been going on
2 for sometime. So, we're very easily able to lift the best
3 practices as it relates to navigational safety and apply that to
4 the LNG carriers.

5 And by the way, there's another issue here. It's
6 not just there might be an act of negligence. We're also very
7 concerned about security. The Harbor Safety Committees that we
8 have and advise the administrator are always -- as we ask all
9 these questions, because, you know, if you have a crash, or
10 something bad happened to a ship, it could be a catastrophic
11 environmental damage, horrible economic damage, but it also
12 could be an intentional act. So, we're looking at all of those
13 factors right now.

14 SENATOR BOWEN: We're certainly dealing with the
15 aspect of the transfer and the on-shore, but the amount of
16 congestion going on in those ports, and I visited an LNG
17 facility in south of Lisbon, Portugal. Basically, they stop all
18 other shipping traffic during the period when they're bringing a
19 vessel in.

20 MR. MOORE: Well, in discussions with the Coast
21 Guard, that's very -- at least initially we might want to do
22 that.

23 But there's this terrible misperception that if
24 there was this crash, and you lost one of your spherical
25 cylinders on the LNG carrier, that there'd be this horrible
26 explosion. LNG is not pressurized. It's just very, very cold.
27 And the immediate reaction would be to the crew. They would be
28 asphyxiated because there's no oxygen, and you'd create this

1 sheet ice on the water because it's so cold.

2 Until that re-gasifies and then vaporizes, it
3 doesn't become volatile.

4 Certainly, you don't want to have a crash of a
5 ship, an LNG carrier, in a major harbor. For that reason,
6 traffic goes very, very slowly. The Coast Guard in two ports
7 has had -- and as a matter of fact, they provide armed patrols
8 for the LNG carriers going into Everett, which is in Boston.

9 So, all of these best practices we could take a
10 look at. As it relates to ships coming into Long Beach, it's
11 much different than the two proposals for off-shore gasification
12 that we've got off of Oxnard. But we're looking at all three of
13 those, and we'll be working with the Coast Guard as it relates
14 to best practices. And it could well be we have a little
15 security zone, coupled with ships stopping traffic, or maybe
16 we'll bring it through Queen's Gate only, as opposed to Angel's
17 Gate. And we'll redirect traffic through Angel's Gate
18 temporarily until we get the LNG carrier at the dock.

19 Those are options that are available to us.

20 SENATOR BOWEN: Turning to another topic, there's
21 been some discussion about the drills and the situations in
22 which some of the OSPR partners have been unwilling to
23 participate in drills.

24 How are you doing with your drills now?

25 MR. MOORE: Well, to refine that a little bit, it
26 was the unannounced drills that we were conducting.

27 SENATOR BOWEN: Right.

28 MR. MOORE: You have to understand, the

1 Legislature gave us a mandate in 1990 that we're going to
2 conduct unannounced drills. And I mentioned the Exxon Valdez.
3 If you look at historically what happened is, LESKA dropped the
4 ball. They weren't able to respond. They also missed a
5 three-day window where the weather was good to get dispersements
6 out there. They just totally blew it.

7 Congress was very concerned, and I think the
8 California Legislature's very concerned that we ought to be able
9 to have a real response capability, not just one on paper. So,
10 in 1990, when they passed the Lempert-Keene-Seastrand Oil Spill
11 Prevention Response Act, they said the administrator will
12 conduct un announced drills.

13 It went eight years before we conducted one
14 because -- for a whole bunch of reasons. The minute we did,
15 industry went crazy. These things are expensive. They felt
16 that they should have had notice. They knew the requirement was
17 there, and I think in part early on, it was part of OSPR's
18 fault; we didn't engage the community early enough to say,
19 "We're going to do these things."

20 It was a fairly dismal failure. That was four
21 years ago. Now they're used to it.

22 And now it's a healthy thing. They look at it as
23 a healthy process to say, Can we really do this? And we've done
24 some fine tuning. We recently conducted -- and I won't mention
25 any names, we call them OSROs, oil spill response
26 organizations -- where you conduct an unannounced drill. They
27 were not able to answer all the bells that are required in that
28 particular timeframe. We de-rated them. We have subsequently

1 retested them, and they brought them back up to the initial
2 rating.

3 But, to give you an idea, that's our job. That's
4 my job, to make sure that these folks can actually do what they
5 say they can do on paper. You can't prove it other than having
6 unannounced drills.

7 SENATOR BOWEN: Finally, with regard to your GIS
8 system, and I have long time interest in GIS systems, and it
9 sounds like you have a relatively good GIS system.

10 Where is hosted? Where is it physically? Is it
11 at the Teale Data Center?

12 MR. MOORE: No, actually it's -- first of all, we
13 have stolen shamelessly from everybody else that has a GIS that
14 we could use, including pipelines.

15 And some of this, by the way, is not only
16 proprietary, there's security concerns. So, we keep it close
17 held.

18 We have our own GIS center right here in
19 Sacramento at 1700 K Street. And what we do, we selectively,
20 like when we had the oil bird event down in Ventura, we had the
21 1,000-1200 grebes that were getting oiled from all the way down
22 into your district, we selectively will pull out GIS, and we'll
23 look at what we have in there, and we'll transport that to the
24 field so that our incident command can work the issue and have
25 the information available to him or her, and not sending
26 everything else.

27 But it's kept in Sacramento. It's selectively
28 manipulated in Sacramento. We add on and subtract and update.

1 We're going through some updates right now in terms of
2 transects.

3 SENATOR BOWEN: But you have your own system?

4 MR. MOORE: Yes.

5 SENATOR BOWEN: What's the basis for it? What
6 software does it use?

7 MR. MOORE: Whoa, I think it's ARK Info.

8 CHAIRMAN PERATA: That'd be my guess.

9 [Laughter.]

10 SENATOR BOWEN: We've had a long discussion about
11 the need for GIS info in various places.

12 MR. MOORE: I mentioned earlier the pipeline
13 break we had in Alameda. It was our GIS that punched that out
14 way before Kinder Morgan even showed up.

15 SENATOR BOWEN: It's a great example of the value
16 of GIS.

17 Of course, it also has a huge value in economic
18 development decisions, because you'd rather know where the
19 pipeline is before you send the back hoe out.

20 MR. MOORE: Absolutely.

21 SENATOR BOWEN: Thank you.

22 SENATOR ASHBURN: Just one, Mr. President.

23 The address you just gave to this top-secret
24 secure location, would you give me that again? No, only
25 kidding.

26 I am very impressed by your knowledge. And in a
27 conversation that you and I had, and in your discussion here
28 today, you've identified four different agencies of government

1 that have jurisdiction in a similar area of concern with respect
2 to spills.

3 And I just was wondering if, since we discussed
4 this, you have any additional thoughts, thought you'd be willing
5 to share with the Committee, in ways that you in this position
6 can help promote consolidation or coordination that does not now
7 exist where we have four separate agencies of government that
8 have been charged with spill responsibilities?

9 MR. MOORE: Well, we're very fortunate, and I
10 think what the Senator's referring to, just to put a little more
11 clarity on it, there are four state agencies that regulate
12 pipelines in some form, depending upon their location: the
13 State Fire Marshal, State Lands Commission, the Division of Oil
14 and Gas Geothermal Resources, which does production fields and
15 gathering lines, and then us, OSPR.

16 I have 26 plan holders. They're all pipelines in
17 a marine environment. If they break, they're in a marine
18 environment.

19 Those agencies have regulatory control that are
20 aimed at pipeline safety. Some people call it prevention of
21 spills.

22 And if you put on a graph all of those
23 agencies -- State Lands Commission, Fire Marshall, DOGGR and
24 OSPR -- there's only one that goes across the board when you put
25 on the Y axis, Prevention, Preparedness and Response, and that's
26 us. So, if the State Fire Marshal regulated pipeline breaks, we
27 respond.

28 And the one at Donner is a, for example, is a

1 Fire Marshal one.

2 Now, we're very fortunate for a couple reasons.
3 We've engaged the industry, and we found a certain amount of
4 willingness to voluntarily comply with best practices. We've
5 seen some change in that era.

6 I also have penalty authority that the Fire
7 Marshal and the State Lands, on the spill end of it, and DOGGR
8 doesn't have, so that when they come in, for example, the Kinder
9 Morgan spill in Suisun Bay, if I find that's a violation of a
10 law, in many cases it is, failure to notify or whatever it is, I
11 can get their attention very, very, very quickly through the
12 penalty process.

13 You know, that's a hammer that I don't think we
14 need to use if we're going to get voluntary compliance. I think
15 you've identified an issue here, perhaps a challenge for us to
16 do better as it relates to working with those other agencies
17 until there is some look at consolidation.

18 It's beyond my level of flight here in terms of
19 authority or changing authority in a state agency, but we have a
20 situation where you've got fragmented authority in state
21 government right now as it relates to pipelines.

22 SENATOR ASHBURN: And that's the challenge that I
23 would give to you, is that you will be the administrator of this
24 agency. But to the extent that we've identified four others
25 who have similar and disjointed authority, somebody needs to
26 lead the charge in coordinating and reviewing these overlapping
27 jurisdictions.

28 I'm looking to you to do that.

1 MR. MOORE: Yes, sir.

2 SENATOR ASHBURN: Because I don't think there's
3 anybody that can match your expertise in this area.

4 MR. MOORE: Well, we'll take that on as a
5 challenge, and we'll do our very best.

6 SENATOR ASHBURN: Thanks.

7 CHAIRMAN PERATA: Anything further?

8 SENATOR BOWEN: May I have a second bite at the
9 apple?

10 CHAIRMAN PERATA: Oh, sure.

11 SENATOR BOWEN: Actually, this is an easy
12 question.

13 How do you account for or tally the locations and
14 causes of spills so that we can see whether there are patterns,
15 or do you?

16 MR. MOORE: Oh, yes. We have two full-time
17 people that are data base research folks. And they not only
18 maintain the data base, but they manipulate it for us for data
19 calls.

20 In anticipation of today's hearing, I said I
21 wanted all pipelines, 2004 and up to date to 2005, over 42
22 gallons. That's one barrel. And I'd like the causal factors,
23 if we can get them.

24 This helps us do a whole bunch of things,
25 including identifying trends. If we've got a problem with
26 response in terms of protocols, and repressurizing a pipeline,
27 like that's a "duh," why are we doing this? Justifying a spill
28 when there's other protocols available to us, like injecting

1 nitrogen, a good example, then something's wrong with that.

2 It helps us either identify or confront the --
3 our stakeholders, the regulated community, and say, "Let's do
4 this better."

5 Or, if we're seeing a lot of pipelines in one
6 particular area going for a particular reason, what's the issue,
7 what's the trend? The last couple in Bakersfield have been
8 abandoned pipelines. They still have oil in them. They're 30
9 years old. They're starting to corrode. So, maybe we have to
10 address this from an abandoned pipeline, get mapping in there
11 and find out where they are, and vacate those pipelines. So, it
12 helps us do that.

13 We've been doing this for ships for about 15
14 years.

15 SENATOR BOWEN: Do you send that kind of analysis
16 to us, to the environmental committees? Do you do it in any
17 kind of way that would be accessible to the public?

18 MR. MOORE: Well, there are two things. We have
19 an oversight committee. It's called the Technical Advisory
20 Committee, and their appointees are from the Legislature, from
21 the Governor. And they're constantly providing oversight, and
22 we're constantly giving them that data. And they're very, very
23 interested, by the way, in trends. So, that's number one.

24 Number two, we also charge the advisory
25 committees at each port and harbor to come up with the same
26 thing, causal factors.

27 Human factors were a big problem aboard ships.
28 They were also a problem at night on oil transfers. Folks would

1 fall asleep, and we'd get what we call a burp. Four or five
2 barrels in the water, that'll get your attention, because the
3 individual fell asleep.

4 So, if the human factors are an issue, then we've
5 got to look at work hour limitations, or we have to look at all
6 the -- and in fact, we've done that. And we have fairly
7 comprehensive -- we have analysts on staff that look exactly at
8 those things. I'm not going to tell you they're going to look
9 at biorhythms, but in fact they do. And we look at those things
10 that we need to tackle in terms of trends that come right out of
11 the data base that we maintain.

12 Did I get close?

13 SENATOR BOWEN: That's good, thank you. I
14 appreciate it.

15 MR. MOORE: We have no other software programs,
16 though.

17 SENATOR BOWEN: I bet you do, and I bet you don't
18 have an inventory of them either.

19 How many people have Solitaire installed on their
20 laptops?

21 [Laughter.]

22 MR. MOORE: I've asked for it, and I can't get it.

23 CHAIRMAN PERATA: Well, I'd love to have this go
24 on forever, but is there someone here who'd like to speak in
25 support of the Administrator?

26 MR. HURNER: Greg Hurner, California Department
27 of Fish and Game.

28 Apologies, Senator. Our Director, Ryan

1 Broddrick, wasn't able to come over. He got called to a
2 meeting, and we've been trying to get him over here, but he
3 wasn't able to make it.

4 As a former chief of enforcement for OSPR, and
5 long years with the Department of Fish and Game, we recognize
6 the value of OSPR to our public trust responsibilities and our
7 job in protecting our natural resources.

8 I won't belabor this, because I think Carl showed
9 you his vast knowledge in this area. That's why he's before you
10 today.

11 So, just on behalf of the Director, we'd like to
12 encourage you to confirm his nomination.

13 Thank you.

14 CHAIRMAN PERATA: Thank you.

15 Anyone further? Family?

16 MR. MOORE: No, sir.

17 CHAIRMAN PERATA: We have a motion by Senator
18 Battin, please call the roll.

19 SECRETARY WEBB: Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Bowen.

22 SENATOR BOWEN: Aye.

23 SECRETARY WEBB: Bowen Aye. Cedillo.

24 SENATOR CEDILLO: Aye.

25 SECRETARY WEBB: Cedillo Aye. Battin.

26 SENATOR BATTIN: Aye.

27 SECRETARY WEBB: Battin Aye. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.

2 CHAIRMAN PERATA: The motion to confirm is
3 approved, congratulations.

4 MR. MOORE: Thank you, sir.

5 CHAIRMAN PERATA: Our next confirmation is
6 Ms. Rosario Marin, California Integrated Waste Management Board.

7 SENATOR POLANCO: Mr. Chairman and Members.

8 CHAIRMAN PERATA: Senator Polanco.

9 SENATOR POLANCO: If I may, allow me to introduce
10 Rosario Marin.

11 Members, I have known Rosario for well over ten
12 years. I have watched and worked with her on a professional
13 level. She has served with integrity when she was a member of
14 the Huntington City Council, Huntington Park City Council.

15 I believe she exemplifies the leadership skills
16 and the management skills that are necessary to be an effective
17 public servant. There is no doubt that when she was nominated
18 by the President to serve in the capacity as the U.S. Treasurer,
19 there was no doubt that she would be confirmed. The Senate went
20 on to confirm her.

21 I'm here to lend my support and introduce her to
22 you. She is an individual who is well known in Southern
23 California, has been very active with the League of Cities. You
24 will see in your binders, I believe, a letter of support. She
25 is active with the rural communities. She is a public servant,
26 and has served as a public servant, I think, in a very -- in a
27 manner that is exemplary.

28 So, it is with great enthusiasm, Mr. Chairman and

1 Members, that I ask that we move -- you all move this nomination
2 to the Senate Floor, that you confirm her, that you give her
3 that opportunity to continue to be the kind of public servant
4 that will make a difference in the quality of life for people.

5 Please, it gives me great pleasure to introduce
6 her to you at this point in time.

7 CHAIRMAN PERATA: Thank you, Senator.

8 MS. MARIN: Thank you, Mr. Polanco, and thank
9 you, Mr. Chairman.

10 It's a pleasure to be here with all of you. I do
11 have a small statement, if you would like that.

12 CHAIRMAN PERATA: Please, absolutely.

13 MS. MARIN: Members and certainly Mr. Chairman,
14 Governor Schwarzenegger has bestowed upon me a great honor by
15 nominating me to the California Integrated Waste Management
16 Board. My colleagues further honor me by electing me Chair.

17 If confirmed, I look forward to working closely
18 with the Senate and the Assembly on issues related to the board.

19 Before proceeding any further, Mr. Chairman, I
20 would like to take the moment to introduce the members of my
21 family who are here with me today. They've traveled from
22 Huntington Park to be with me on this very special day.

23 If I may, the love of my life, my husband, who
24 I've been married to for 23 years, Alvaro Marin. My son, who
25 actually is the one that propelled me into public service, Eric,
26 who's 19 years old. My mother, she is who I owe my life to,
27 Carmen, and my son, Alex Whitford Marin. He's 13 years old; he
28 wants to be a judge.

1 CHAIRMAN PERATA: He's a big 13-year-old.

2 MS. MARIN: Yes, he is.

3 My daughter couldn't be with me today because she
4 has a number of tests that she had to do today, but it's a
5 pleasure for me to have them here on this very special day.

6 CHAIRMAN PERATA: Welcome to you all.

7 MS. MARIN: When the State Legislature created
8 the current Integrated Waste Management Board, its structure
9 back in 1989, every city and county in the state was mandated to
10 divert 25 percent of their waste stream by 1995, and 50 percent
11 by the end of the year 2000. That goal must be met.

12 Unfortunately, last year California was at 47
13 percent. This will be corrected. Achieving a statewide 50
14 percent diversion rate is my first priority, and by increasing
15 diversion through strong market development and continued work
16 with local jurisdictions, I will issue a California meets or,
17 better yet, exceeds the 50 percent goal.

18 When it comes to increasing statewide diversion,
19 there is still much that needs to be done. We need to continue
20 to work with local jurisdictions throughout the state to ensure
21 that resource saving programs are being implemented. In
22 addition, we want to make sure that they are able to measure
23 their diversion as accurately as possible.

24 As a former mayor here in California, I
25 understand what it takes for local jurisdictions to divert waste
26 and save resources. I've lived it. And therefore, I will work
27 with local governments to get them to the state's goal of 50
28 percent, or better yet, beyond that.

1 As we move forward implementing the other board
2 mandates, my goal is to develop and set up a comprehensive
3 performance measurement system for each and every one of our
4 programs. The thoughtful development and consistent application
5 of performance measures will enable us to better understand the
6 efficiencies and effectiveness of our programs and activities.

7 One of the first new challenges the board must
8 face is the management of electronic products. We're in the
9 infancy of this program, but we have a vision: to eliminate
10 toxic waste from electronic products, and to eliminate all
11 electronic products from landfills.

12 I look forward to reporting back to the
13 Legislature with the successes of SB 20 and the Electronic
14 Recycling Act.

15 Another ground-breaking initiative at the
16 Integrated Waste Management that we have undertaken is the
17 education and the environment. That was -- this is the
18 initiative that was created by Assembly Member Fran Pavley. And
19 we're working very, very hard to get that done.

20 Both of these programs are only a small sampling
21 of the new programs we are fully committed to as a board. As I
22 said before, my goal is to go beyond the 50 percent, and in
23 order to get there, the board has adopted the Zero Waste
24 California Attitude, with the hope that all Californians will
25 change the way they look at our resources.

26 In conclusion, I look forward to working with
27 environmental organizations, industry professionals, and the
28 public to strengthen our commitment to the environment, and to

1 show the world how the environment and the economy not just can
2 co-exist, but actually thrive.

3 Mr. Chairman and Members of the Committee, I am
4 honored to be considered for the privilege to serve our
5 beautiful state of California in this capacity. I have been
6 blessed with unparalleled and humbling opportunities throughout
7 my close to 20 years of public service career.

8 I would like to thank the Governor for the
9 confidence he has shown in me, and I will work to earn your
10 confidence.

11 I promise to work diligently on all matters that
12 you may wish to raise with the board.

13 And I know I just was handed the letter that you
14 have regarding some of the issues regarding diversion
15 technologies. Certainly I'm here to respond to any of your
16 questions.

17 I will tell you that the board has already put on
18 the web page that we will be reconsidering this item at our next
19 board meeting.

20 CHAIRMAN PERATA: Thank you.

21 Senator Bowen.

22 SENATOR BOWEN: Thank you.

23 I feel the need to go into some greater depth on
24 the issue of the conversion technologies and the process.

25 This Committee has this year spent a fair amount
26 of time with different nominees talking about how agencies
27 comply with the requirements of the law.

28 And perhaps you can explain, or perhaps you can

1 respond to the letter from Californians Against Waste that came
2 to the Committee. I believe it's dated April 4th. I assume you
3 have a copy of it.

4 And also the letter to you, again from CAW, with
5 regard to what I would call irregularities in the process. The
6 allegation is that the report was basically abandoned
7 mid-stream, the form of the report. That there was a workshop
8 that was cancelled and never held. The revised version was not
9 made public until the day the workshop was to be held, and a
10 week before the item was to be heard. That what was typically a
11 pro forma resolution that comes to the Legislature with a report
12 was basically revised to be an industry -- to use the industry's
13 draft, that I look at, and it looks to me like a marketing
14 document not like a resolution.

15 So, I'm really concerned, both from a process
16 standpoint and from a substance standpoint. Perhaps you can
17 address those, and we can talk about the requirements of
18 Assemblywoman Matthews' bill, and how you view the report as
19 prepared as complying.

20 MS. MARIN: Thank you, Senator Bowen.

21 I will be very, very happy to address all of
22 those issues.

23 I should tell you that we've had long
24 conversations with CAW, and I understand that they're also going
25 to be making a statement here.

26 We -- first of all, it's interesting because this
27 report was due to the Legislature in 2003. I just got appointed
28 a few months ago. Then it was due to the Legislature back then.

1 They realized maybe they needed an extension, so it was in
2 2004.

3 And in the -- with the desire and with the goal
4 to submit this to the Legislature, since we knew that it was
5 pretty late to the Legislature, we attempted to gather as much
6 information, as much public input.

7 We have -- one of the benefits, if you will, is
8 that the board goes out and provides workshops, and hearings,
9 and on and on and on. Because of the multiple input that we
10 got, the revision to the report came in about a day before --
11 two days, actually, two days before a proposed workshop. And
12 basically the workshop is to hear further comments.

13 What we thought at that time is that wasn't
14 enough time to give everybody the opportunity to review the
15 report. And we allowed to come -- the report to come to the
16 board completely so that everybody, the board members, all of
17 us, would be available for discussion, which is a little bit
18 different than what has happened. Traditionally, workshops are
19 not fully attended by all of the board members.

20 And so, given the time constraints, we -- I gave
21 enough time to hear all of the concerns regarding this report.

22 We did. We talked about it for a long time at
23 the board meeting. And when the resolution -- Californians
24 Against Waste actually did say that they would like to have more
25 time, that they would like to have another month, but it was, on
26 the one hand, we had the Legislature saying, "Where is this
27 report? Where is this report?" And I didn't feel that we
28 needed to prolong it.

1 It still has to go within our process, it still
2 has to go through the agency, and it still has to go through the
3 Governor's Office, and then finally to the Legislature.

4 In hindsight, Senator, we have now decided to
5 bring it back for reconsideration.

6 SENATOR BOWEN: The letter that I have from
7 Mr. Murray says that in the middle of the discussion, the board
8 abandoned its version and began working from an industry draft,
9 and that members of the public had no way to follow the
10 revisions until the board's legal staff recommended that the
11 board break to allow copies to be distributed to the public.
12 And that even then, the revisions to the document prohibited
13 even engaged stakeholders from being able to follow the changes
14 and assess what was being adopted.

15 MS. MARIN: We did. Initially, I actually
16 thought that the revisions to the -- to the resolution, it's the
17 resolution that we're talking about, that it was provided by
18 staff.

19 When we were made aware that it wasn't staff,
20 that it was one of our stakeholders that was proposing that,
21 then what I did, I stopped the meeting at that time. And we
22 gave copies to everybody that was there. Actually, CAW was the
23 very first one that apparently received that particular revised
24 resolution.

25 What the revised resolution is, Senator, and
26 everything that was added, are statements that are contained
27 numerous times throughout the report. So, staff worked with all
28 the stakeholders. And what was -- we did not take everything

1 that -- as you call it -- that one of the stakeholders had put
2 forth.

3 We dropped item by item, and then we went through
4 each and every single line that we were adding. Every single
5 one of those lines are repeated, are contained within the
6 report. It's not like we added anything new that had not been
7 said in the report.

8 SENATOR BOWEN: All right. Let's go to the
9 report, because when I read the Matthews' bill again, it directs
10 the board to limit its evaluation solely to environmentally
11 friendly technology, saying specifically that the board shall
12 only evaluate those conversion technologies that provide
13 demonstrated environmental benefits over the transformation and
14 disposal of waste.

15 Does the report do that?

16 MS. MARIN: Yeah. Well, we evaluated a number.
17 We evaluated a number of different processes, Senator.

18 SENATOR BOWEN: But the language says the board
19 shall only evaluate those technologies. Does it do that?

20 MS. MARIN: Yes, we did that.

21 SENATOR BOWEN: Does it do only technologies that
22 provide demonstrated environmental benefits?

23 MS. MARIN: Well, the report goes to everything
24 that was evaluated.

25 SENATOR BOWEN: Right, but your direction in this
26 report was to evaluate only those kinds of technologies. You
27 didn't do that; did you?

28 MS. MARIN: Well, it's -- my understanding is

1 that that's exactly what we did, Senator.

2 Of course, what would be -- it seems to me that
3 we have this chicken and egg kind of thing. We wouldn't know
4 how they are -- until we evaluate all of those technologies, we
5 don't know which ones are beneficial.

6 SENATOR BOWEN: The report also requires the
7 board to provide the Legislature with any meaningful information
8 on the adverse public health and environmental impacts
9 associated with conversion.

10 It is my understanding that the report does not
11 do that.

12 MS. MARIN: Well, we don't have the data. We
13 don't have enough public data.

14 And here's another one, Senator. It's a very
15 important challenge that we have, because there is not -- there
16 is no data out there available for public health issues because
17 there are no facilities. We cannot have facilities unless we
18 have this public data.

19 SENATOR BOWEN: If that's true, then why would
20 you adopt a resolution that says "Conversion technologies are
21 preferred to and superior to landfills and incineration?"

22 MS. MARIN: Because of, there are no facilities
23 here in California. There are other facilities throughout
24 Germany, and Japan, and Australia, and many other European
25 countries.

26 What we don't have is data here for California.

27 SENATOR BOWEN: How can you make the statement
28 that they're preferred and superior, and claim that you have the

1 data to make that statement, but not the data to evaluate health
2 impacts?

3 MS. MARIN: Well --

4 SENATOR BOWEN: If you're citing the data from
5 other countries to justify that statement, there is no
6 information on -- Germany didn't do any information on health
7 impacts of these projects?

8 MS. MARIN: I am sure Germany has a lot of
9 information on that, Senator.

10 SENATOR BOWEN: Then there's data.

11 MS. MARIN: But there's no data here for
12 California.

13 SENATOR BOWEN: But again, if you're going to
14 cite those as justification for this provision that finds that
15 these technologies are preferred and superior, then you'd better
16 be prepared to be asked about the data that's adverse to that
17 finding, or that may have other implications to it.

18 MS. MARIN: Okay. Well, one of the things that I
19 have done, Senator, is, we are bringing both that item for
20 reconsideration at the board. And should more explicit data be
21 necessary, we've got to do that.

22 We are in a very difficult -- it's a very
23 challenging situation for us, Senator.

24 SENATOR BOWEN: I'm also concerned with your
25 description of you having "a few months ago" to deal with this,
26 when you were appointed in April of 2004, which is a year ago.

27 MS. MARIN: Right, but what happened, Senator, is
28 that this report, the way that it was devised, the scope of

1 work, the contracts that were given and all that, that was way
2 before I came on board.

3 SENATOR BOWEN: Right, but the changes to this
4 resolution were not way before you came on board?

5 MS. MARIN: No, that happened at the last board
6 meeting.

7 SENATOR BOWEN: Nor were the changes to the
8 report.

9 Again, when I go to the letter that I received
10 from Mr. Murray, it basically says that the direction that the
11 board was taken was changed radically in March of this year.
12 That's my bottom line, what I take from it.

13 MS. MARIN: I don't know what he means by
14 that.

15 SENATOR BOWEN: The revisions included
16 significant and controversial changes, including changes that
17 would effectively reverse previously adopted board policy on
18 conversion technologies. Entire recommendations were deleted
19 and new ones added. New definitions were proposed that would
20 undermine the existing statutory framework and call into
21 question the legal status of the very conversion technologies
22 the report set out to assess.

23 Regardless of your position on conversion
24 technologies, this report cannot be judged as an authoritative
25 and balanced document. Far from providing the requested
26 guidance and clarification to the Legislature, the
27 inconsistencies and inaccuracies in this report only compound
28 the exiting ambiguities.

1 MS. MARIN: Senator, if I may, I don't know if
2 you have a copy of the letter that I sent back to Mr. Murray.
3 As a matter of fact, all four of the board members signed that.
4 And in that letter, we specifically suggest --

5 SENATOR BOWEN: I don't have it.

6 MS. MARIN: You don't?

7 SENATOR BOWEN: I do not.

8 MS. MARIN: In that particular letter, Senator,
9 we specifically talked about how we did not change any of the
10 former -- here, let me give you this.

11 SENATOR BOWEN: Apparently no one else here has
12 copies either.

13 MS. MARIN: Well, Mr. Murray is here.

14 SENATOR BOWEN: The questions that I have are,
15 again, both about the process and the timing, and about the use
16 of industry-drafted documents, about decisions that are made to
17 you to say certain things and then claim that there isn't data
18 to say other things.

19 I will see what the witnesses in support and
20 opposition have to say, but I'm really concerned.

21 CHAIRMAN PERATA: Senator Ashburn.

22 SENATOR ASHBURN: Mr. Chairman, I find this
23 conversation very interesting.

24 However, the issue, at least for me, is the
25 experience, the qualification, and the judgment of the
26 individual who's been nominated for the position, not a
27 particular transaction of the board, or especially the position
28 of this board. I mean, the policy decision of the board.

1 You know, it would not be unusual for statements
2 to be made that are not backed by accurate documentation. Not
3 that accurate documentation doesn't exist, but they just don't
4 happen to be attached to the work product at that moment.
5 There's an item before us today where that's the case in another
6 matter.

7 Anyway, I mean, if there was a radical departure
8 in the direction of the Integrated Waste Management Board,
9 that's your prerogative. Now, some of us may have different
10 points of view with respect to the policy direction, but the
11 Governor has the authority to appoint those individuals that he
12 feels are well qualified to make these decisions.

13 And as far as I'm concerned, the issue before us
14 are your qualifications. And if I heard you correct, Ms. Marin,
15 you have, as the Chairperson of this board, placed this matter
16 back on the agenda for reconsideration.

17 MS. MARIN: Yes, I have.

18 CHAIRMAN PERATA: Thank you.

19 Senator Battin.

20 SENATOR BATTIN: Thank you, Mr. Chairman.

21 When you became President of the board, you
22 testified that, if I heard you right, that your board was
23 negligent in getting the report to the Legislature by how long?

24 MS. MARIN: The report was due back in 2003
25 originally.

26 SENATOR BATTIN: Then you submitted it when?

27 MS. MARIN: We haven't yet, sir.

28 SENATOR BATTIN: So when you took your position

1 that was one of your priorities. You said this is where we are
2 negligent in what we're required to do, so let's get this done.

3 MS. MARIN: Exactly, Senator.

4 SENATOR BATTIN: Where was it in terms of its
5 drafting or the process up at that point when you decided to
6 actually obey what the Legislature had required through action
7 of law?

8 MS. MARIN: The report had been drafted. It went
9 out for public input. It was -- a lot of public input was
10 received. It was reviewed -- not reviewed by redrafted, if you
11 will, and it was for adoption at the board meeting to be
12 submitted to the Legislature at that time.

13 SENATOR BATTIN: I just want to kind of echo
14 Senator Ashburn's comments.

15 I have, in my short time in this Committee, cast
16 an affirmative vote for some folks that I probably, on an
17 ideological basis, would not agree with. It goes to the fact
18 that it's not a role here. Our role is to make sure that you
19 are not incompetent or corrupt. And if you are either, then you
20 shouldn't be confirmed.

21 But your opinions, and what you're being put as a
22 policy maker need to reflect your own judgment as appointed by
23 the Governor, which I think is -- hopefully that's how we'll
24 proceed with this.

25 Thank you.

26 MS. MARIN: Thank you, Senator.

27 CHAIRMAN PERATA: Senator Cedillo, anything?

28 SENATOR CEDILLO: A couple of things.

1 I appreciate the detail and the candor in which
2 you responded to the concerns raised by Senator Bowen.

3 It appears to me, my evaluation is that on the
4 question of process, that is meaning of it for you is a
5 substantive meaning. So that rather than have a perfunctory
6 workshop, you provide a fuller hearing in which you know that
7 there'll be more people, more observation, more opportunity for
8 input. So, instead of simply going through the procedure per se
9 in strict sense, you really provided an opportunity for a
10 substantive response.

11 Some people don't like that, and that's okay.
12 Due process is a process which is due, and in this instance, the
13 fact that you provided a greater opportunity, and in addition,
14 since that does not seem to be popular to suffice, that you're
15 willing to bring that back and provide another opportunity, it
16 seems that you are providing more than the process which is
17 due.

18 So, I'm not as disturbed by that as my colleagues
19 may be.

20 I will say, though, I have known you for a
21 significant time. We are of different parties. I only say that
22 because it's noted in the file.

23 We have shared different opinions on some issues,
24 but as Senator Polanco, it's incredible to see in this instance
25 that you've brought your experience, a very meaningful
26 experience, the representative for Pete Wilson during a very
27 controversial time period, his public spokesperson on sensitive
28 issues, has made you it keenly aware of the need to have input,

1 particularly when issues are controversial.

2 You came into this process on the board late in
3 the process. You're trying to comply with a variety of
4 interests. The Legislature wants the report; it's late. The
5 community wants input; you want to respond to both, and you're
6 trying to reconcile those.

7 I observe that you are doing so a way that is
8 based upon your training and experience from not only the period
9 that you represented Governor Wilson, but when you represented
10 President Bush also as the Treasurer.

11 And I appreciate that, as I have in the past,
12 your willingness to stand firm on values that you hold. I
13 appreciate, and my colleagues may differ with me, but I
14 appreciate your championing an issue that was important to me,
15 that remains important to me in terms of highway safety and
16 national security, through much controversy. It's easier for
17 the Senators like Polanco and myself to champion those issues
18 than for you, given the viewpoints of many members of your party
19 to stand out like that. I consider it nothing less than stellar
20 leadership.

21 So, I have no other questions or comments.

22 CHAIRMAN PERATA: Thank you.

23 I just had a couple things that I wanted to make
24 mention of.

25 One involves sacred sites and the permitting of
26 landfills. There was a case with the Gregory Canyon landfill
27 that was adjacent to a sacred site.

28 Generally speaking, though I'm going to be

1 specifically speaking, the state, I believe, needs to improve
2 its relationships with the sovereign nations that are in this
3 state. And in many instances, it seems that the only
4 recognition that people have, and not yourself, Ms. Chairwoman,
5 is that it involves gaming, and the associate Indians and
6 reservations with gaming.

7 But there is a whole history and a whole body of
8 evidence to indicate that we need to become more aware of and
9 treat Indian nations just as they are, sovereign nations.

10 On this particular question, it's of high
11 concern. And I just want to ask you to be aware of this. If
12 you are, more aware of it, if that's possible.

13 And then to think about whether or not you have
14 adequate authority as a board in this area. I don't know if
15 you've thought about that, or you would care to respond to that?

16 MS. MARIN: Yes, Mr. Chairman.

17 It's very interesting because actually your very
18 last comment is what goes to the heart of the question regarding
19 this, and you're probably speaking about the Pala landfill,
20 nearby the Pala Band.

21 CHAIRMAN PERATA: Yes, I was.

22 MS. MARIN: There was no legal authority that the
23 board had to deny the permit, even if it was by a sacred site.
24 The law is not there yet to give us the authority to do that.
25 And so, we did talk about that. There was no legal reason for
26 us to deny a permit, even based on that.

27 CHAIRMAN PERATA: But it is an authority that
28 you believe you should have?

1 MS. MARIN: That we should have? Well, you're
2 the one that provides the authority.

3 CHAIRMAN PERATA: Do you have a recommendation
4 for us?

5 MS. MARIN: Well, certainly if we were to have
6 more authority, to have more of an enforcement, that would be
7 very good for us, sir.

8 CHAIRMAN PERATA: One other thing. You probably
9 know that there was a fleeting time when the Governor was
10 considering something called a CPR. One of the areas of concern
11 for many people were these types of boards. This board was like
12 in the top ten.

13 And part of it goes to the question of, what is
14 it that they do?

15 One of the things that would probably encourage
16 people to be more inclined to the efficacy and the importance of
17 the solid waste board is more enforcement of the law, more
18 citations of violations.

19 The Bureau of Audits a while back cited that
20 cities and counties have been relatively lax as primary
21 enforcement agencies. And I would certainly like to see a more
22 aggressive oversight. I think it would be in the best interest
23 of not only the state, but the furtherance of the board's
24 interests.

25 MS. MARIN: I continue agree with you more, sir.

26 CHAIRMAN PERATA: Good.

27 We'd like to open it up now to those who are here
28 in favor. Oh, golly, you forgot your tie. Do you want to wait

1 for a minute?

2 [Laughter.]

3 MR. PANE: Thank you, Senator.

4 CHAIRMAN PERATA: You need a tie.

5 MR. PANE: It always reminds me of my
6 grandfather, who's departed, and as a laborer for the Southern
7 Pacific Railroad, I remember on Sundays he'd get dressed in his
8 Sunday's best, and no tie. So, on occasion --

9 CHAIRMAN PERATA: You're honoring your
10 grandfather.

11 MR. PANE: Chair, Members of the Committee, Josh
12 Pane on behalf of the California Refuse Removal Council, over
13 100 solid waste management and recycling companies throughout
14 this state.

15 Our directors of regulatory affairs have worked
16 closely with Ms. Marin and have found her to be of stellar
17 leadership and a person of vision.

18 We have not always agreed with her and her
19 policies, but we can attest to her leadership ability. She
20 obviously, from her background as you've heard, from her humble
21 beginnings, her immigrant roots, her service in Huntington Park
22 as Mayor and a member of the council all the way to, we have her
23 name on our currency. She has done all of that, and now we have
24 this terrific person helping lead the solid waste, and then what
25 you do with it, what we, our companies, do with it, recycle it.
26 We have her helping lead that charge.

27 So on behalf of the hundred companies, small and
28 large, throughout the state, we'd like to give our hearty

1 support for her. Thank you very much.

2 CHAIRMAN PERATA: Thank you, Mr. Pane.

3 MR. PANE: I'll wear a tie next time, Mr. Chair.

4 CHAIRMAN PERATA: Mr. Cedillo and I will make
5 sure that we comment.

6 MS. HUNTER: Good afternoon, Mr. Chairman and
7 Members. Yvonne Hunter with the League of California Cities.

8 It's always a pleasure to be able to strongly
9 support a former city official before this Committee. And
10 Rosario is part of the League family. She was a city council
11 member in Huntington Park. She was President of the League's
12 Mayor and Council Members Department.

13 We've worked closely with her in her capacity as
14 an elected official. I worked with her on welfare reform when I
15 staffed the League's task force on that and she was involved.

16 Since she's been at the waste board, she's been
17 accessible. She's raised excellent questions, and allowed us an
18 opportunity to talk about local government issues. And we
19 strongly endorse her confirmation.

20 Thank you very much.

21 CHAIRMAN PERATA: Thank you.

22 MR. APREA: Mr. Chair, Members of the Committee,
23 Marc Aprea, representing Republic Services. We operate as
24 Richman Sanitary Consolidated Disposal and Teramina Industries
25 in California.

26 We're here to strongly urge your support of
27 Rosario Marin. And I can tell you that I personally and my
28 client have known Rosario for many years, dating back to her

1 time on the city council and as Mayor of the City of Huntington
2 Park.

3 And I will tell you that during her tenure there,
4 she was passionate in terms of her advocacy for open government,
5 including all parties' views and making sure that government was
6 transparent. And she has taken those values and added those to
7 the waste board.

8 And I would also like to make another point, that
9 this decision about Ms. Marin and the issue of conversion
10 technology is an argument in favor of keeping the board a board,
11 because otherwise we would never have this conversation as to
12 what the policy is, what it ought to be, where it was going. In
13 essence, a single individual could determine that policy with
14 really no public record in terms of how the decision was made.

15 And so, I would encourage this Committee and the
16 Senate to support her nomination, and we would urge your Aye
17 vote. Thank you.

18 CHAIRMAN PERATA: Thank you.

19 MR. HELGET: Mr. Chairman, Members of the
20 Committee, I'm Chuck Helget. I represent Allied Waste
21 Industries and Browning-Ferris Industries.

22 And we're here in very strong support For Ms.
23 Marin's nomination. I echo the comments of the speakers ahead
24 of me, and I won't belabor it any further.

25 Thank you.

26 CHAIRMAN PERATA: Thank you.

27 Anyone else interested in coming forward? In the
28 area of pro, con or --

1 MR. MURRAY: In the middle.

2 CHAIRMAN PERATA: -- in the middle.

3 MR. MURRAY: Mr. Chair and Members, I'm Mark
4 Murray with the environmental group Californians Against Waste.
5 I appreciate the opportunity to talk with you.

6 I want to -- since our letter to the board has
7 been raised, I would like to kind of fill you in a little bit on
8 the story and tell you where we are today on this issue.

9 Frankly, we continue to have concerns with regard
10 to the substance of and process by which the California
11 Integrated Waste Management Board approved a report requested by
12 the Legislature evaluating conversion technologies. We believe
13 that the report required by the Matthews' legislation, despite
14 expending \$1.5 million authorized for the purposes, fails at
15 this point in time, fails to complete key evaluations of the
16 potential impacts of these technologies on public health and the
17 environment.

18 And frankly, without these evaluations, I think
19 it's impossible for the board or the Legislature to make any
20 policy decisions with regard to these technologies. As you may
21 be aware, there are several bills pending before the Legislature
22 proposing policy changes with regard to this technology, and
23 unfortunately, that evaluation has not been completed. So, I'm
24 not sure how we're able to move forward.

25 Now, with regard to whose fault is it that that
26 evaluation wasn't done, I think that Ms. Marin has noted that
27 she has only been with the board for a year. This report pre-
28 dated her. I think that there was a failure on the part of the

1 board to recognize that, because these technologies didn't exist
2 in California, we're going to have to be creative in figuring
3 out some way of evaluating their environmental impacts. And
4 that might have been taking California's solid waste and
5 shipping it to one of these existing facilities in another state
6 or in another country, or using some of the pilot technologies
7 that exist at some of the federal laboratories to test the solid
8 waste to see what the environmental impacts might be.

9 Unfortunately, by the time that those kind of
10 ideas came around, the \$1.5 million had already been spent.

11 So, the bottom line is, the environmental
12 evaluation, the primary reason that we believe the Legislature
13 asked the waste board to do this report, is incomplete, and I
14 believe it's impossible to make any policy recommendations.

15 We were also very frustrated, as we described in
16 the letter, with the process by which the final version of the
17 report was brought forward. And we communicated that
18 frustration both at the board meeting and in the subsequent
19 letter, the March 18th letter, to the Integrated Waste
20 Management Board.

21 I think that it's possible that I failed to
22 appreciate in communicating that letter the pressure that maybe
23 the nominee was feeling with regard to getting this report on
24 time, getting this report out, this overdue report. It's my
25 understanding subsequently that in fact this Committee had
26 requested her to answer questions about where is that report.
27 So, I think there may have been some feeling of pressure to get
28 that report out the door, and I think that that may have been a

1 rationale for why some corners were cut.

2 I don't believe that -- I don't believe that
3 folks had more time by virtue of abandoning the public workshop
4 process. The public workshop process that the board has, which
5 I think is frankly a model for other state agencies, is an
6 opportunity for folks to ask questions of staff, ask questions
7 of board members, have board members ask questions, to try and
8 get their arms around policy issues and reports, and not be
9 constrained by a three-minute time limit. It's an opportunity
10 to have all-day workshop for stakeholders to have that
11 give-and-take. I think it's unfortunate that there wasn't time
12 to do that in this process, and I would certainly like to see
13 the board continue to have that process, which I think is
14 separate from the board adoption process. So, I do think that's
15 very valuable, and I think that frankly most stakeholders
16 probably agree, and I think that Ms. Marin agrees that that's a
17 valuable element to have in the process.

18 Now, I will tell you that if the only response
19 that we had from Ms. Marin and the members of the board was the
20 March 23rd letter from -- signed by all the board members to CAW
21 in response to our letter, I would probably be up here
22 opposing this nominee. However, in the subsequent time since
23 that letter came out, we have had an opportunity to talk with
24 both board staff, with board members, and have had a number of
25 conversations with Ms. Marin to talk about this issue.

26 And I think that I have to thank this Committee
27 and the staff of this Committee for helping bring attention to
28 this issue, because obviously we failed with our March 18th

1 letter to get the attention of the board members on this issue.
2 And thus, our disappointment and frustration with their March
3 23rd response. However, somehow you have been successful where
4 we were unsuccessful in motivating a change of heart, a change
5 of thinking with regard to this issue.

6 CHAIRMAN PERATA: The power of prayer.

7 MR. MURRAY: That must be it.

8 And so, we're very pleased that the board has
9 agendized for their April 19th meeting the item of
10 reconsideration of this report.

11 Now, that is just an item that's on the agenda.
12 We would like to see several things, like -- that we would like
13 to see happen in that action. We would like to see the board
14 actually vote to reconsider it. We would like to see a change
15 in the resolution, the transmittal resolution that was
16 discussed, to see that it's not making any policy
17 recommendations. We would like to see some of the substance
18 that is in that report that we think is not supported by the
19 data in that report to be removed.

20 And I don't want to get bogged down in technical
21 issues that may be --

22 SENATOR ASHBURN: Mr. Chairman, again, I would
23 request that we not get into the specifics of the discussion of
24 this particular agenda item, and what did or did not transpire,
25 or what should or should not transpire.

26 We're here for the qualifications of the
27 individual. I would simply request that we terminate the
28 discussion if it's going to be on the specifics of how the board

1 is going to deal with an agenda item. Please.

2 CHAIRMAN PERATA: Senator Bowen.

3 SENATOR BOWEN: Mr. Chair, thank you.

4 In my view, a nominee for any position is not
5 qualified if he or she cannot or will not follow the law.

6 So, the question about what the Matthews' bill
7 requires, and whether or not the report does that, is extremely
8 salient as far as I'm concerned to the issue of qualifications.

9 And in the broader context, we have had a great
10 deal of difficulty with whether agencies follow the law. We're
11 having a discussion right now over permanent disability
12 benefits. We're having a discussion, we've had many discussions
13 at the Public Utilities Commission about how rates are
14 allocated.

15 I think it's a fantasy to think that if we
16 weren't here with this confirmation hearing, that this item
17 would be back on the agenda for any discussion of whether or not
18 it complies with the Matthews' bill, which is the law of the
19 State of California.

20 So, I think it's salient.

21 CHAIRMAN PERATA: And I believe that the
22 Chairwoman has indicated that this is coming up.

23 I think you understand the concerns that have
24 been raised. We look forward to an appropriate response.

25 MR. MURRAY: I appreciate it, if that's the will
26 of the Committee with regard to that. I won't go into the
27 details of that.

28 I will say that we are appreciative of the

1 response that we've gotten from the Chair of the board in the
2 last several days. We had a very long and positive
3 conversation, constructive conversation, about this issue.

4 And with regard to the process by which the board
5 would move forward in the future, I hope that we can count on
6 the Chairwoman's leadership on this issue in implementing the
7 changes that we're not going to talk about right now at that
8 meeting on April 19th. And, you know, I wish that this
9 Committee had some other vehicle besides the nuclear bomb of
10 rejection to continue to affect the actions of appointees the
11 way that you've been so successful in the last ten days.

12 So, I really appreciate the efforts of this
13 Committee on this issue. Again, I appreciate the efforts of Ms.
14 Marin in the last several days to be responsive to the issues
15 that we raise.

16 CHAIRMAN PERATA: And I believe it goes to the
17 quality of leadership that the Chairwoman has been as
18 responsive.

19 Thank you for being here, Mark.

20 Yes, sir.

21 MR. MAGAVERN: Mr. Chairman and Members, I'm Bill
22 Magavern with Sierra Club California.

23 I'd like to inhabit the same nether world that
24 Mr. Murray has staked out, in between support and opposition,
25 and for many of the same reasons. So, I will not repeat those
26 reasons.

27 Senator Bowen has actually captured them very
28 well.

1 I would just say briefly that I was involved in
2 the negotiations that led to the Matthews' bill, final language,
3 calling for the report. And we believed that the report that
4 the board approved does not answer the questions that the
5 Legislature asked in that bill. Although it does answer some
6 questions the Legislature did not ask.

7 I have number of times gone before the board and
8 asked for the emissions data. Show us the data on these
9 different technologies that will affect our air and water. And
10 without that data, all you've got is faith-based policy.

11 I also want to point out that the situation with
12 the board is exacerbated right now because the board is
13 unbalanced. The environmental seat is vacant. And the previous
14 holder of the environmental seat had broad support from industry
15 and local government as well as environmentalists, but was not
16 reappointed. So right now you have, the industry seat is filled
17 very capably, but the environmental seat is vacant, which means
18 that when issues like this come up before the board, there
19 really is an imbalance. And often, some of the most important
20 questions are not asked.

21 So, I wanted to call that the Committee's
22 attention, and to thank you for taking the time to explore these
23 issues.

24 CHAIRMAN PERATA: Thank you.

25 Anything further?

26 I'd like to acknowledge that Mr. Pane went out
27 and got a tie. I wish my kids were that responsive.

28 Anything further?

1 SENATOR ASHBURN: May I make the motion?

2 CHAIRMAN PERATA: Absolutely. We have a motion
3 to recommend confirmation.

4 SENATOR BOWEN: If I might, Mr. Chair, I'd like
5 to be able to support this nominee. I've supported many
6 nominees who I don't agree with philosophically here.

7 But I would request that we hold this nomination
8 on the Floor, and determine whether or not this agency has -- I
9 don't think they can comply with the law in the period of time
10 they have left, but they certainly ought to provide us with some
11 kind of an assessment of how they're going to get there.

12 CHAIRMAN PERATA: I think that would be in
13 conformance with the time schedule anyway.

14 The other thing is, I believe the vacancy is a
15 gubernatorial appointee?

16 MS. MARIN: Two of them.

17 CHAIRMAN PERATA: We'll be happy to see if we can
18 get you a full complement of members on your board.

19 With that, we have a motion to recommend
20 confirmation. Secretary, please call the roll.

21 SECRETARY WEBB: Ashburn.

22 SENATOR ASHBURN: Aye.

23 SECRETARY WEBB: Ashburn Aye. Bowen.

24 SENATOR BOWEN: Not voting.

25 SECRETARY WEBB: Cedillo.

26 SENATOR CEDILLO: With comment, if I may?

27 CHAIRMAN PERATA: Sure.

28 SENATOR CEDILLO: I would just say, I share the

1 concerns raised by Senator Bowen. But I think there's a clear
2 distinction here. And I think that the nominee has demonstrated
3 that.

4 On the question, for example, permanent
5 disability, questions remain.

6 On the question of fiduciary duty, questions
7 remain.

8 But on the question here of the nominee to
9 provide the leadership, to recognize the process, due process,
10 substantive process, whether or not the meaning of due process
11 and substantive process is not that you get the results that you
12 want, or that you have an opportunity to respond. And it's
13 weighed fairly and appropriately.

14 But you do not, and you're not guaranteed the
15 results that you aspire to. That is the challenge that you're
16 confronted with, and I have recognized many people trying to
17 exhaust and abuse, in essence, due process, to somehow
18 manipulate a result so that you get the result that you want.

19 That is not the meaning and substance of due
20 process. So, I think I distinguish this nominee from other
21 nominees because she has, even today, when we may not value it,
22 but even her presence today and the actions in the last ten days
23 are indicative. There's no court order here that had to direct
24 her. There was no manipulation in her response to a court
25 order, as the previous nominee who was not moved forward.

26 Here she has indicated the capacity to serve on
27 the board in the manner in which we want all board members to do
28 so, in compliance with the law, and the awareness, and with the

1 balancing of all the competing interests, she has demonstrated
2 that leadership.

3 I am happy to vote Aye on this.

4 SECRETARY WEBB: Cedillo Aye. Battin.

5 SENATOR BATTIN: Without a comment, Aye.

6 SECRETARY WEBB: Battin Aye. Perata.

7 CHAIRMAN PERATA: Aye.

8 SECRETARY WEBB: Perata Aye. Four to zero.

9 CHAIRMAN PERATA: I would like to hopefully have
10 you leave and have your family leave, recognizing that the
11 interest that we have in the Integrated Waste Management Board,
12 we all value the function very, very much. I think the
13 discussion that's gone on here is to backlight how important we
14 think it, and the responsibility that you have. We wish you
15 well.

16 We recommend confirmation on a four-zero vote.

17 MS. MARIN: Thank you.

18 CHAIRMAN PERATA: Congratulations.

19 MS. MARIN: Thank you --

20 CHAIRMAN PERATA: We're going to take a
21 five-minute break so that the fingers can revive themselves.

22 [Thereupon a brief recess was
23 taken.]

24 CHAIRMAN PERATA: Our final appointee today is
25 Ms. Rosalie Mule, come on forward, California Integrated Waste
26 Management Board.

27 Welcome.

28 MS. MULE: Thank you, Senator Perata.

1 Good afternoon, Senator and Committee Members.
2 Thank you for the opportunity to appear before you today.

3 I am honored to be Governor Schwarzenegger's
4 industry representative to the Integrated Waste Management
5 Board, and I am very proud to serve in this administration.

6 I'd like to just share with you briefly a little
7 bit about my background, and share my goals as a member of the
8 board here today.

9 As you know, the Governor has appointed me as the
10 industry representative, and I have worked in the private sector
11 for over 16 years. I've worked for two of the largest waste
12 disposal and recycling companies in the world. And my
13 responsibilities included recycling, government and community
14 affairs, as well as municipal contract management.

15 With my experience in the private sector, and its
16 relationship with both local and state governments, both here in
17 California as well as in Florida and Hawaii, I feel that I bring
18 a broad perspective of my views and my goals to this board.

19 While there is little question that California
20 leads the country in recycling and waste diversion, more than 60
21 percent of our local jurisdictions have met the diversion
22 requirement of the Integrated Waste Management Act and have
23 collectively diverted over 300 million tons of materials from
24 landfills since 1990. There is a lot more that we can do, and I
25 look forward to being a part of that.

26 As a board, I would like to -- as a board member,
27 I would like to focus on some of my goals with you today. I'd
28 like to be able to work with the rest of the board and the board

1 staff and provide focused direction and leadership for the
2 organization. I'd like to concentrate my efforts on market
3 development and work with jurisdictions to increase diversion.
4 I'd like to exceed the current 50 percent diversion goal and
5 work towards a zero-waste California. And last but not least,
6 I'd like to work to increase coordination within our sister
7 agencies at Cal EPA, as well as with other state agencies
8 throughout the state.

9 Let me just briefly explain some of these goals.
10 As an organization, the board has accomplished a great deal in
11 many areas over the years. I continue to say that this board is
12 the best kept secret in government because there is so much that
13 has been accomplished by this board.

14 But through focused, prioritized efforts the
15 organization can be even more effective in its primary goal,
16 which is diversion.

17 I believe it is important to provide our staff
18 with the tools and the training that they need to be effective
19 and successful at their jobs, whether they provide a
20 jurisdiction with technical assistance to help them meet or
21 exceed their 50 percent goal, or offer resources to assist
22 local enforcement agencies to enhance their enforcement
23 efforts.

24 The goal of enhancing market development on a
25 local level will generate the local infrastructure that enables
26 our communities to increase their diversion, and that's what
27 we're all about, is to increase and maximize our diversion. And
28 as communities improve their ability to reduce waste generation

1 and divert materials, California can and will reach a zero-waste
2 goal.

3 Again, I thank you for the opportunity to appear
4 before you today, and I'll be happy to answer any questions.

5 CHAIRMAN PERATA: Thank you.

6 Members?

7 This is not a sign of disinterest. They're
8 presenting bills.

9 MS. MULE: Right. That's fine.

10 CHAIRMAN PERATA: Thank you.

11 Senator Bowen.

12 SENATOR BOWEN: More on conversion.

13 These are your responses. I was struck in
14 reading your responses, basically the equation of conversion and
15 diversion.

16 The proposal that there be diversion credit that
17 can be claimed for diversion, and the concerns about how the
18 diversion rate fell are of concern to me.

19 Can you address those issues?

20 MS. MULE: Are you referring to the question
21 regarding the decrease in the diversion rate from 48 to 47
22 percent?

23 SENATOR BOWEN: Yes, and the concern about
24 whether or not there ought to be diversion credit given for the
25 conversion technologies that are the subject of the report,
26 which we won't discuss again, having just discussed it until
27 we're all tired of it.

28 MS. MULE: Well, the diversion rate, I feel that

1 the diversion rate dropped for a couple of reasons, as I stated
2 in my answer. And one of those reasons is that since 1990, the
3 characteristics of our waste stream have changed significantly.

4 Back in 1990, how many of us had a computer? Very
5 few of us. Was there the level of construction activity that's
6 currently going on today here in California? No.

7 So, those waste streams, the e-waste, as we call
8 it, the computer monitors and electronics, as well as
9 construction and demolition debris were not a significant
10 portion of the waste stream. Those materials are very heavy.
11 You know, yard for yard, they're much heavier. And so, when you
12 factor that into someone's disposal, their disposal increases in
13 terms of their weight, and so the diversion rate will go down.

14 And conversion technologies, the board had
15 adopted a resolution back in 2002, 2002-177, that I believe
16 recommended some sort of diversion credit. They're just
17 recommending to the Legislature that they consider some sort of
18 diversion credit up to 10 percent. And I believe that that was
19 based on the fact that currently, the Legislature does allow for
20 up to 10 percent diversion credit for transformation facilities
21 as well as biomass facilities. And so, I think that's where the
22 10 percent came from.

23 SENATOR BOWEN: There's a mention in your
24 responses to the calculation of the diversion rate and the use
25 of the annual taxable sales data, the impact of e-commerce.

26 But I would actually think it would go the other
27 way, that the more sales we have that are not reflected in that
28 sales base, the lower the rate and so the larger the percentage

1 should be of diversion.

2 Somehow I'm missing why that would make the
3 rate --

4 MS. MULE: What happens is that with the sales,
5 the sales data is not included in the adjustment factor formula,
6 and there's four factors: population, employment, sales tax
7 data, and of course there's a fourth that I can't recall.

8 But the more, you know, e-commerce you have, that
9 sales data is not reported so you don't see that growth in the
10 sales. And so then, while your generation doesn't seem to be
11 increasing, your disposal is increasing, and that's why your
12 disposal --

13 SENATOR BOWEN: But wouldn't that make the rate
14 of diversion go up?

15 MS. MULE: No, it makes it go down. It makes it
16 go down.

17 And you know what? I'm not the expert on the
18 adjustment factor.

19 And that's my whole point, is that the adjustment
20 factor formula is very confusing. And I would like to see us
21 simplify our accounting or measurement system for diversion and
22 disposal so that we can count real tons that are being diverted
23 and real tons that are going into the landfill.

24 SENATOR BOWEN: Maybe somebody on the board staff
25 can enlighten me as to how it is that, if you've got sales that
26 are missing from the sales factor, that that makes it look
27 like --

28 MS. MULE: Because your generation is lower, is

1 lowered so your disposal becomes higher.

2 And I'll be happy to have staff work with you on
3 that.

4 SENATOR BOWEN: Apparently I don't understand the
5 way the ratio --

6 MS. MULE: It's very --

7 SENATOR BOWEN: Even though I know what a GIS
8 system is, I can't understand this.

9 My stand on this is going to be the same. I'm
10 going to abstain and will look forward, before this comes to the
11 Floor, to seeing the board's plan for dealing with this report,
12 which I know both of you inherited in an overdue and undone
13 state, and apparently with much of the money spent already that
14 was to go to do the analysis.

15 But we're in a position where we're going to be
16 asked to gauge the impact of adding these technologies. I have
17 environmental justice concerns because of the kinds of places
18 where they're typically proposed to be sited. And without the
19 health data, it's difficult to assess what we should do from a
20 policy standpoint.

21 That way I don't have to explain my vote. It's
22 done.

23 CHAIRMAN PERATA: Senator Battin? It's just us
24 kids left.

25 Anyone here who'd like to come in support,
26 opposition, or in the middle, in the nether world as it's been
27 called?

28 MR. PANE: Mr. Chairman, Members of the

1 Committee, Josh Pane again on behalf of the California Refuse
2 Removal Council.

3 Mr. Chair, I took what you said earlier
4 seriously. Fortunately, Evan Edgar, the Director of Regulatory
5 Affairs, was with me and loaned me his tie. I'm just hoping
6 that next time maybe I have dispensation from you that, if I'm
7 tieless, I might still be able to testify the next time, since I
8 have gotten this commitment out of the way.

9 But once again, for the 100 solid waste and
10 recycling companies of the CRRC, the 5.5 million residents that
11 our members serve, over 50 large recycling facilities, over a
12 dozen commercial compost facilities, we'd like to give our
13 hearty support for Ms. Mule.

14 With her over 15 years' experience in the
15 industry, she understands the investment that the industry has
16 made in California, in recycling, and to simply decrease the
17 solid waste going into the landfills.

18 With her experience in the last year on the
19 board, she's addressed some very complex issues, such as
20 compostable plastics, bio-reactor landfills, and market
21 development issues that are key and will be key to the future of
22 recycling and the solid waste industry.

23 So on that, I would simply say thank you,
24 Mr. Chairman, for allowing me to come back up and testify with a
25 tie on, and want to give our hearty support for Ms. Mule.

26 Thank you.

27 CHAIRMAN PERATA: Thank you, sir.

28 MR. HELGET: Mr. Chairman, Members of the

1 Committee, I'm Chuck Helget, representing Allied Waste and
2 Browning-Ferris Industries.

3 Ms. Mule is very highly qualified for this board,
4 and we are in strong support of her confirmation.

5 CHAIRMAN PERATA: Thank you.

6 MS. HUNTER: Mr. Chairman and Members, Yvonne
7 Hunter with the League of California Cities in support of this
8 nomination.

9 Senator Bowen, I'm willing to take a stab at
10 explaining the adjustment factor, if you're interested.

11 CHAIRMAN PERATA: After class?

12 [Laughter.]

13 SENATOR BOWEN: I was going to say, you should
14 check with the teacher before you start that lesson now.

15 MS. HUNTER: Okay. We'll have this off-line
16 afterwards.

17 Ms. Mule's experience in the waste industry, and
18 in particular her interaction with local governments in Southern
19 California, I think gives her a very good appreciation of the
20 challenges the opportunities that local governments face, not
21 only in meeting their AB 939 goals, but also in landfills and
22 transfer station issues. She's been -- has raised a number of
23 very good issues, helpful issues to us, and has been very
24 accessible.

25 We think she would make a great waste board
26 member. Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. MURRAY: Mr. Chair and Members, Mark Murray

1 with the environmental group Californians Against Waste.

2 I have to get up in support of this nominee.

3 In 1989, when the statute was created
4 establishing a provision for both an environmental
5 representative and an industry representative on the Integrated
6 Waste Management Board, at the time our world was a garbage
7 world. It was a garbage collection and disposal world, and the
8 industry was the garbage collection and disposal industry.

9 And what we've seen, the transformation we've
10 seen over the last decade is one where the waste stream that
11 we're dealing with is now managed by the industry in one of two
12 ways: 50 percent of it, plus a few percentage points, is
13 disposed; 50 percent is being recycled.

14 And Ms. Mule represents the new solid waste
15 industry. She's the new garbage guy, and the new garbage guy
16 spends most of their time doing recycling. And she brings to
17 this board industry experience that is rooted for the most part
18 in residential and commercial recycling.

19 For that reason, we want to really acknowledge
20 the administration's appointment of someone that reflects this
21 more modern version of today's solid waste industry. We support
22 her nomination.

23 CHAIRMAN PERATA: Thank you.

24 MR. APREA: Mr. Chair and Members of the
25 Committee, Marc Aprea, representing Republic Services.

26 We would strongly urge your recommendation for
27 the confirmation of Ms. Mule.

28 I've known Rosalie since 1994, when she was the

1 Recycling Coordinator for BFI in Hawaii, and I was the Director
2 of State Government Relations.

3 SENATOR BOWEN: Hawaii, and you both ended up
4 here?

5 MR. APREA: I was here. I was here and she was
6 there.

7 MS. MULE: But he would come to visit quite
8 often.

9 CHAIRMAN PERATA: Then you moved from Hawaii to
10 Temecula?

11 MS. MULE: No, Florida first, and then back to
12 California.

13 CHAIRMAN PERATA: That was for re-entry, and then
14 you came to Temecula.

15 MS. MULE: Exactly.

16 [Laughter.]

17 MR. APREA: Mr. Chair, she did have a lapse of
18 judgment going to work for Waste Management, but she has
19 certainly redeemed herself with coming onto the waste board.

20 I would strongly urge your confirmation of her
21 appointment. She has been an extraordinary member of board.
22 She has been full of energy, has really focused the attention on
23 the task.

24 Again, I'll reiterate my point, that the folks
25 like Rosalie are reasons why this board ought to be maintained,
26 and we would urge your confirmation. Thank you.

27 CHAIRMAN PERATA: Thank you.

28 Anyone further?

1 Seeing none, do you have family here?

2 MS. MULE: Well actually, some of the folks here
3 are part of my solid waste and recycling family because I've
4 known them for so many years.

5 SENATOR ASHBURN: Question, Mr. Chairman.

6 I apologize to you. I was at the Health
7 Committee making a presentation.

8 MS. MULE: That's fine, Senator.

9 CHAIRMAN PERATA: I explained.

10 SENATOR ASHBURN: Thank you, and Mr. Cedillo is
11 there now.

12 I don't get a chance, and the Members don't have
13 a chance often, to speak to two members of the integrated Waste
14 Management Board, and Ms. Marin is still here.

15 I just want to ask what can do to help stop this
16 insanity of building mountains of these landfills?

17 You know, landfills used to be below ground. Now
18 in every community these have become mountains, with this
19 ridiculous requirement for daily cover that is insane.

20 And you talk about a lack of scientific
21 documentation to justify it, that is the most outrageous act
22 maybe ever without scientific basis.

23 Is there something that you can do to stop this
24 insanity?

25 MS. MULE: Well, I think the first thing that we
26 can do, and I don't mean to be facetious, but we can not
27 generate as much trash as we're generating. And that's our
28 whole goal at the board, is to source-reduce what we can, and to

1 reuse what we can, and then divert what we can so that we don't
2 have to build these monster facilities, as you call them.

3 But also, landfills are highly, highly regulated,
4 Senator. Highly regulated by federal regulations, state
5 regulations, as well as local regulations.

6 Here in California, I feel that we have some of
7 the most stringent state regulations of any state throughout the
8 country. I mean, we have -- our waste board is -- we have
9 purview over certain regulations. We have the Air Board that
10 regulates, the Water Board. So, there are numerous regulations
11 that are on the books.

12 I guess maybe what we could do is engage in
13 conversation, have Cal EPA engage in conversation with you,
14 along with all the sister agencies, and see what we can do.

15 But really, they're highly, highly regulated
16 facilities.

17 SENATOR ASHBURN: No disputing that. That's how
18 we got to this point of doing something that makes no sense.

19 No matter how much you divert, no matter how much
20 you recycle, there are going to be landfills, or we're going to
21 use conversion technologies, much to the chagrin, I guess, of
22 some who don't want to go in that direction.

23 And so, and I didn't mean to point at your
24 direction, Senator Bowen; truly I did not.

25 But as a former local government official, as was
26 Senator Perata, we were there when these regulations came down.
27 And, you know, what my county went through in a 12-year process
28 to find a site for a new landfill, and then to find that

1 landfill, and then to be putting two feet of daily cover to wipe
2 out -- or one foot of daily cover to wipe out the capacity on a
3 premature schedule, with no differentiation of the groundwater
4 tables, of the geographic differences in communities, geologic
5 and geographic condition in all the different areas of
6 California, it just makes no sense.

7 So, I'm just asking you, again, outside the
8 question of your qualifications. This is something I think your
9 board needs to take on, because, you know, the cost to the
10 public and the unsightliness of building these mountains that
11 are methane factories is just ridiculous. It needs to stop.

12 I hope you'll help do that.

13 MS. MULE: Be happy to, Senator.

14 SENATOR ASHBURN: Thank you.

15 CHAIRMAN PERATA: Good answer.

16 [Laughter.]

17 CHAIRMAN PERATA: Anything further?

18 If not, we'll entertain a motion from Senator Battin

19 SENATOR BATTIN: Certainly.

20 CHAIRMAN PERATA: We have a motion to recommend
21 confirmation. Call the roll, please.

22 SECRETARY WEBB: Ashburn.

23 SENATOR ASHBURN: Aye.

24 SECRETARY WEBB: Ashburn Aye. Bowen.

25 SENATOR BOWEN: Waiting.

26 SECRETARY WEBB: Cedillo. Battin.

27 SENATOR BATTIN: Aye.

28 SECRETARY WEBB: Battin Aye. Perata.

1 CHAIRMAN PERATA: Aye.

2 SECRETARY WEBB: Perata Aye. Three to zero.

3 CHAIRMAN PERATA: When Senator Cedillo returns,
4 we'll keep the roll open for him.

5 Congratulations.

6 MS. MULE: Thank you.

7 [Thereafter, SENATOR CEDILLO
8 voted Aye, making the final
9 vote 4-0 for confirmation.]

10 CHAIRMAN PERATA: We have Item Three, Governor's
11 appointees that are subject to confirmation but were not
12 required to appear.

13 [Thereupon the Rules Committee
14 acted on other agenda items.]

15 CHAIRMAN PERATA: Item Four, Ms. Smalley was
16 held-over two weeks ago. She was not required to appear. This
17 is for a vote only.

18 I would, with the Committee's indulgence, like to
19 read a prepared statement.

20 The Governor removed four of his appointees to
21 the Cal STRS Board over their opposition to his proposed
22 privatization of teacher pensions. He established this
23 particular vote as a litmus test for service on the board.

24 Given that, it is only fair to consider
25 Ms. Smalley, the Governor's sole surviving Cal STRS appointment,
26 in that same light.

27 Ms. Smalley's No vote on the motion to oppose the
28 pension privatization measure put her in favor of decreased

1 take-home pay and decreased benefits, and put her at odds with
2 her duty to protect teachers and the retirement funds on which
3 they depend. Diminishing the protections for public pensions
4 diminishes the value and sacrifice of the men and women who
5 devote their lives to teaching and other forms of public
6 service. Teachers have always known they will never get rich or
7 retire in luxury, but they made the commitment knowing they
8 would at least have a safe pension at the end of their careers.

9 Regrettably, Ms. Smalley chose not to support the
10 teachers who needed her support. In Ms. Smalley's testimony
11 before this Committee, she voted No, she said, because she
12 believed the board should not vote at all, and not because of
13 the merits of the issue. This is, in effect, in my opinion, in
14 practical terms a distinction without a difference.

15 I do not believe it would be responsible for this
16 Committee to approve Ms. Smalley when did not meet her fiduciary
17 responsibilities.

18 One of the best comments I have seen on this
19 issue comes from Mark Battey, one of the four Cal STRS trustees
20 summarily removed by the Governor, and I quote:

21 "Our job as fiduciaries was not
22 and cannot be to implement a mission.
23 Fiduciaries required by law to act with
24 undivided loyalty to participants and
25 beneficiaries of the trust."

26 Unquote.

27 Mr. Battey also said he hopes the next set of
28 appointees to the Cal STRS Board can focus solely on fiduciary

1 duty because that's what our teachers, students, and the state
2 deserve.

3 I whole heartedly concur, and so encourage the
4 Governor.

5 Any comments by other Members of the Committee?

6 With that, we have a motion.

7 SENATOR BATTIN: I'll move.

8 CHAIRMAN PERATA: We have a motion to confirm by
9 Senator Battin. Call the roll, please.

10 SECRETARY WEBB: Ashburn.

11 SENATOR ASHBURN: Aye.

12 SECRETARY WEBB: Ashburn Aye. Bowen. Cedillo.
13 Battin.

14 SENATOR BATTIN: Aye.

15 SECRETARY WEBB: Battin Aye. Perata.

16 CHAIRMAN PERATA: The motion fails.

17
18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 3:47 P.M.]

22 --ooOoo--
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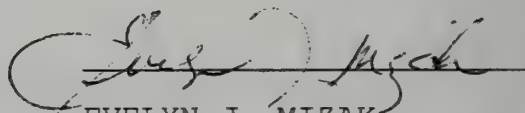
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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DEPARTMENT OF REAL ESTATE**OFFICE OF THE COMMISSIONER**

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March 28, 2005

The Honorable Don Perata
Chair
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

Pursuant to your letter dated March 17, 2005, I have prepared a brief statement setting forth my goals as Real Estate Commissioner.

As Commissioner of the Department of Real Estate (DRE), I believe my primary responsibility is to lead the department in its efforts to carry out its mission, i.e., "To protect the public in real estate transactions and provide related services to the real estate industry."

The regulation of this growing industry, currently consisting of over 428,000 real estate licensees, and the qualification of subdivision offerings on a statewide basis, are vital functions of the department which help ensure that the public is protected in their real estate transactions. These responsibilities are core programs within the DRE's structure.

As Commissioner of the Department of Real Estate, I intend to carry out this charge in accordance with Governor Schwarzenegger's policy agenda for the State, while working closely with the California Legislature on any Department of Real Estate related issues or activity.

Since assuming my role as Commissioner in October of last year, I have taken the following actions: I initiated an internal review of the DRE's operations. I visited every office and met with the staff in order to ascertain the condition of the department I had inherited. I also met with the department's personnel director and reviewed the personnel files of all of the executive managers. Additionally, I was fully briefed on the current fiscal status of the DRE. Upon completing this review, I comfortably concluded that the DRE was in good standing. I readily recognize, however, that there is always opportunity to improve and I intend to lead the department in that direction, seeking improvement where warranted.

Soon after taking over the Department of Real Estate, I was brought into a collaborative process that had just begun with three other departments which were actively pursuing a project called Functional Integration. Functional Integration involved the Department of Corporations, Department of Financial Institutions, the Office of Real Estate Appraisers and

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the Department of Real Estate. The goal of this project is to find common functions and areas of responsibility and to work together to effectively leverage those activities within our departments to achieve new efficiencies. Extensive analysis was performed and we are currently implementing the resulting recommendations which were developed late in 2004. We expect to complete most of these recommendations by the end of the current fiscal year. During this process, the four departments continue to find other examples of how they can achieve better efficiencies that go beyond this current phase. I intend to pursue this integration effort not as a project, but as an ongoing process to continue to make State government more efficient by sharing successes.

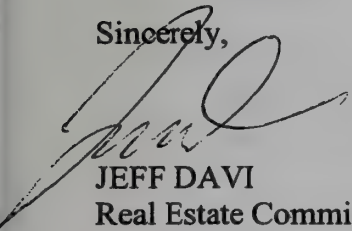
My goals for the department range in diversity from internal processing timeframes being reduced to assisting the State housing providers with housing issues that relate to real estate agents, mortgage brokers, and developers. The following are my short and long term goals that I propose to help ensure that the Department of Real Estate complies with its mission in protecting the public and sufficiently regulates the real estate industry during this very active housing market:

- Capitalize on using technology. I will continue the utility of eGovernment and continue to expand the department's use of technology by encouraging the furtherance of online services, such as its eLicensing system. Through this system, license exams can be scheduled, licenses renewed and related license transactions conducted, all with real time processing. Since implementation in September 2002, over 327,000 online transactions have taken place. Technology is the future, and I intend to maximize its use so our clients remain online rather than in line. In this regard, I hope to put in place by FY 05/06 a new state of the art IVR system to replace our existing phone system, which is antiquated and cannot efficiently handle the current volume of calls received. Also, I have started a feasibility study to look into converting our current pen to paper license examinations to electronic exams. This will achieve several efficiencies, the greatest being to reduce licensure timeframes and potentially issue a temporary license upon successfully completing the license examination.
- I intend to continue to decrease the timeframes for issuing licenses to applicants. The timeframes have been steadily declining. These efforts result in better service to our customers and a more satisfied industry. I also intend to continue efforts to streamline the subdivision qualification process to help improve the state's housing stock. In this regard, I have already initiated discussions with industry as to the potential development of an on-line filing process.
- The Department has recently completed a collaborative effort with the timeshare industry to rewrite the timeshare law to reflect the products currently being marketed. I have initiated the administrative process to adopt related regulations and will continue to work with industry to streamline timeshare development and the qualification process to make California a model for other states to follow.

- The number of real estate licensees has increased significantly. In light of this, I believe it is necessary to review existing continuing education, license prerequisites and the broker supervision requirements to ensure the professionalism of the real estate industry. I intend to, at a minimum, maintain and hopefully elevate the level of professionalism.
- Work on the Governor's Housing Team, on behalf of DRE and with Housing and Community Development (HCD) and the California Housing Finance Agency (CalHFA) to help address the housing supply shortage throughout the state. The state is in need of additional affordable housing to address the long standing fact that the market has produced substantially less over the past decade than the actual number of units needed by the residents of California.
- Communications (External and Internal):
Internally: I have started a program whereby I will travel to each of our offices throughout the state on a regular basis to present staff with the most current information coming from the Capitol. I will include present plans and what's proposed for the future. In this way, employees have a clear understanding of what is occurring. In addition, I will gather input to share with my executive management team to address concerns and questions raised.
Externally: I have initiated an outreach effort to industry through several different channels. This goes beyond speaking events and forums. I am forming committees that will meet on an as-needed basis to address specific issues in the specialty areas of the industry. For example, I just formed a timeshare committee consisting of representatives of the timeshare industry. We have been conducting this type of outreach since January of this year and we continue to look for other opportunities to hear from industry and to address the concerns of consumers as they relate to the actions of licensees throughout the state.

It is my intention and I would expect to be measured by how effectively I achieve these goals, but most notably, that having taken over a department in good working order, the ultimate measure of my success as it relates to all of these goals can be summarized in the following statement. Upon the conclusion of my tenure with the Department of Real Estate, I expect to leave the department in even better shape than how I found it, and in so doing, I would have contributed to the effort to make State government more efficient and accountable and effective in its own activities.

Sincerely,



JEFF DAVI
Real Estate Commissioner

Enclosures: (2)

- Resume
- Form 700

January 10, 2005

Benita D. Haley
221 29th St.
Manhattan Beach, CA 90266

SENATE RULES COMMITTEE QUESTIONS FOR
CONFIRMATION HEARING ON APPOINTMENT AS A
MEMBER OF THE COMMUNITY COLLEGE BOARD OF GOVERNORS

I. PLEASE PROVIDE US WITH A BRIEF STATEMENT OF GOALS. WHAT DO YOU
HOPE TO ACCOMPLISH DURING YOUR TENURE AS A MEMBER OF THE
BOARD OF GOVERNORS?

I accepted the nomination to the Board of Governors with an open mind concerning the system. I do not have in mind specifics that need to be fixed or represent anyone or anything except myself. As a matter of fact, I have the highest regard for the educational and training efforts of the Community Colleges for the adults in the State.

As a board member, a few of the goals and accomplishments that I would generally like to see are:

- The new membership of the Board work effectively with each other and assist the new Chancellor with his broad and demanding job.
- The Board lead the system in providing closer relationships with all interested segments involved with the community colleges internally and externally. The better their understanding of what the community colleges can accomplish for the people in the State, the more effective the system will be.
- The evolution of regional district planning working with California Community College Trustees (CCCT) to reduce duplication and costs in a number of areas, e.g., high cost programs like nursing, technical offerings, and instructional materials (textbooks).
- Funding for the System Office be provided to employ a sufficient number of persons to support the services to the Districts that they need and to meet the system legislative mandates.

JAN 14 2005

2. WHAT DO YOU BELIEVE ARE THE RESPECTIVE ROLES AND SCOPE OF AUTHORITY OF THE BOARD OF GOVERNORS AND LOCAL BOARDS?

I BELIEVE:

Rolls and scope of local boards:

- The Education Code provides the role and scope definition of the local boards quite clearly. The local board has the responsibility to perform the requirements of the Code. Some important activities of local boards are to adopt a budget for the year, set salaries and working conditions for all employees, select and dismiss employees, determine facility needs and plans for general future of the district.
- Local boards since they are elected by district have a responsibility to reflect the higher educational needs and desires of their district constituents.
- The role and scope of a local board is somewhat defined by the State budget for each of the districts.

Roles and scope of the Board of Governors:

- The California Community Colleges System Office, Chancellor and Board of Governors were a legislative creation and have legislative roles and scope definitions.
- The Board of Governors and System office carry out the overarching monitoring of district legislative requirements and activities, provide assistance at district's request, and oversee federal government expenditures for the community colleges.
- The Board of Governors provides statewide leadership representing all of the districts in the State and their interests and needs and in planning for the future requirements and expectations of the community colleges.
- The open meeting process of the Board of Governors encourages all and any interested parties to be heard at their meetings.

3. HOW CAN THE COMMUNITY COLLEGES BEST MEET THE ENROLLMENT DEMANDS OF A GROWING POPULATION WITH LIMITED RESOURCES?

I WISH I KNEW !!

- I think the community colleges are providing all of the needed and right services to the people of the State. The community college is the institution best set up geographically throughout the State to deliver educational services, technical training and retraining for the State economy and revitalization, adult education, as well as ESL and basic skills.
- The community colleges need to find new and different ways to more economically deliver the educational services to the adults of the State. One of the measures to respond to limited resources previously mentioned is the use of regional planning by districts of high cost programs. Another option is to do more teaching ON-LINE.
- I believe there are many more and newer ideas than these out there, and the Board of Governors is there to listen and lead.

4. DO YOU BELIEVE THAT THE MISSIONS OF THE COMMUNITY COLLEGES HAVE BECOME TOO DIVERSE? SHOULD THERE BE PRIORITIES FOR DELIVERY OF PROGRAMS AND COURSES? HOW SHOULD PRIORITIES BE ESTABLISHED?

- NO! I do not believe that the missions of the community colleges have become too diverse. The strength of the community college system is in its diversity and flexibility to respond to the needs of individuals in the districts and to the State economic needs.
- In my opinion the community colleges are the best educational institution the State has to respond quickly to economic needs and it has proven that in the past.
- REPEATED FROM #3 ABOVE:
I think the community colleges are providing all of the needed and right services to the people of the State. The community college is the institution best set up geographically throughout the State to deliver educational services, technical training and retraining for the State economy and revitalization, adult education as well as ESL and basic skills
- On the basis of the fact that there is not enough money at the State level to educate all of the students who could benefit from community college instruction and offerings, a priority system for their programs and courses has to be used.

- I would want to talk with the community college trustees, administrators, faculty and students for their wise advice on how to establish priorities for programs and courses. There may be value in the priority decisions to vary from district to district as the needs of the students vary in that way. I doubt that legislation is the best way to make the decision. If priorities have to be legislated, the legislation should be general in nature and much advice and counsel should come from the trustees, administrators, faculty and students.

5. KEY FEATURES OF A STUDENT FEE POLICY FOR COMMUNITY COLLEGES? WHAT ROLE SHOULD THE BOARD OF GOVERNORS PLAY IN SETTING STUDENT FEE POLICIES?

- A student fee policy for community college students should be predictable and be the least expensive of all of the California higher educational institutions.
- Student fee information should be easily available to students prior to registration and should include any potential fee increase information available at the time of registration.
- Financial aid information should accompany the fee information and the instructions on how and where to apply should be easy to read and follow.

BOARD OF GOVERNORS ROLE?

- The fee structure for the community colleges is a function of the State budget building process and therefore the Board of Governors can make suggestions through that process.
- The Board of Governors should be a sounding board for the ideas and ways to solve the fee problems.
- The Board of Governors role and the System role in setting student fee policies should be one of providing information to the Governor, the administration and the legislative committees involved with budget deliberations. The information could be most useful if it were based on the research on the potential effects of the fee increases on the State's economy and people of the state.

STATEMENT BY CARLTON MOORE
BEFORE
SENATE RULES COMMITTEE
APRIL 6, 2005

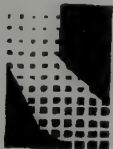
General: Since its inception in 1991, the Office of Spill Prevention and Response has taken on several new missions related to environmental protection, readiness to respond to pollution incidents, response to actual incidents and the restoration or rehabilitation of natural resources damaged as a result of such events. In the early 1990s, OSPR concentrated its efforts on the marine transportation of oil or refined petroleum products. This included all tankers, tank barges, marine facilities handling oil or petroleum products and oil pipelines in the marine environment. In 1995, OSPR took, by delegation, all spill response operations for incidents throughout California, not specifically the marine environment. In 2002, the Legislature included all shipping (vessels greater than 300 Gross registered Tons) as part of the regulated community. This increased our planning oversight responsibilities from approximately 600 plan holders to well over 2000. OSPR sponsors Harbor Safety Committees in the State's five largest ports, and the Administrator makes appointments to these Committees according to criteria set forth in statute. Because OSPR is the primary (only) agency dealing with port and maritime issues, many other marine related issues are addressed by OSPR, including cruise ship pollution, LNG carriers, bulk hazardous material carriers, and homeland security issues affecting the marine sector. OSPR has funded many port safety improvements and continues to provide access to new technologies to enhance inter harbor and approach navigation safety, pilotage and tug escorts requirements for every tanker visiting a California port.

Short Term Goals: New alternative response technologies, not even envisioned in the mid 1990s, are available today which will greatly aid in the response to major oil spills. These need to be made available and kept ready to ensure that our first responders have access and the failures of the Exxon Valdez response are not repeated. These include use of dispersants, radar satellite, real-time trajectory modeling, and new salvage requirements for the largest of ships that visit our ports. There are enormous benefits environmentally, economically and from public health and safety standpoint. Our short-term challenge is to accomplish much of this via government-private sector partnerships, and continued emphasis on research and development here, in California.

Long Term Goals: Our greatest challenge, by far, is to better address spill prevention and response for the State's inland areas. We have had tremendous success in prevention, preparedness and response in the marine sector as evidenced by enormous decline in spill statistics from ship, tankers and tank barges. We need to export our best practices to potential polluters inland, address, head-on, our biggest problem, pipelines. Pipelines now exceed ship, tankers and barges for the amount of oil in California's environment, and now represent the biggest spill category by frequency and volume. Moreover, the failure of pipelines in California may have market impact in addition to environmental impact. This challenge will involve close coordination with four state agencies, and at least two federal agencies.

MAR 25 2005

TOTAL P.03



California Integrated Waste Management Board

Rosario Marin, Chair

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Arnold
Schwarzenegger

Alan C. Lloyd,
Ph.D.
Secretary for
Environmental

March 29, 2005

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

I thank you for the opportunity to share my goals and perspectives as Chair of the Integrated Waste Management Board (IWMB) with Senator Perata and his colleagues on the Senate Rules Committee. I have prepared answers to the specific questions posed in the letter of March 17th. I am honored that the Governor has entrusted me with the challenge and responsibility of serving the people of California as a member of the IWMB.

Question #1

Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as chairwoman of the board?

- Increase Diversion - Achieve a 50% statewide diversion rate by 2007
- Set Measurement for Success - Develop performance measures for every IWMB program or activity
- Impose Accountability - Hold every program with the IWMB to prescribed performance measures
- Increase Efficiency - Emphasize policy decisions and delegate routine, administrative, non-controversial decisions
- Develop Leadership - Develop the IWMB to its full potential and meet new challenges while making needed changes

Achieving a statewide 50% diversion rate is my first priority and, by increasing diversion through market development and working with local jurisdictions, I will continue these efforts to meet and exceed the 50% goal.

California Environmental Protection Agency

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MAR 29 2005

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web site at <http://www.ciwmb.ca.gov/>

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As we move forward in implementing the IWMB's many mandates, my goal is to develop and implement a comprehensive performance measurement system for all of the IWMB's programs. The thoughtful development and consistent application of performance measures will allow us to better understand the efficiencies and effectiveness of our programs and activities. The results will allow us to make the adjustments necessary to continuously improve our programs. I also see performance measures as a tool to ensure accountability and to ensure that there is a clear direction as to what program success means and the expectation that it will be achieved.

I am also working to increase efficiency and make the best use of staff resources. To this end, I am exploring ways to allow for greater delegation of routine, administrative, and non-controversial items to the Executive Director. This delegation will allow the IWMB to engage in more in-depth policy discussions including greater attention toward developing tools for local jurisdictions and investigating waste management trends. In addition, it will allow staff to spend more time in the field assisting local jurisdictions rather than preparing action items for the IWMB. I look to develop new and innovative programs and technologies that will provide for greater diversion throughout the state. As a leader in waste management and environmental protection throughout the nation, the IWMB will continue to provide that leadership and be open to what innovations will help us achieve and surpass 50% diversion.

Above all, it is my goal to provide the IWMB, its members, its staff and its programs, with the integrity it deserves and the leadership it needs. I will ensure that the IWMB will rise to new challenges, protect the people of California and its resources and serve this State to the best of our abilities.

Question #2

As Board Chair, how do you reconcile your statements at the Little Hoover Commission on the superiority of GRP #1 to the current board structure? Do you support the abolition of the IWMB?

I continue to stand by my statements made before the Little Hoover Commission. As I stated, the great work of the IWMB will continue to contribute to California's diversion of resources from landfills and will continue to benefit our economy with or without the existing board structure.

The Administration took bold steps in proposing to restructure, reorganize and reform State government to make it more responsive to the needs of California's citizens. I have pledged to work with the Governor and Cal/EPA to maintain the integrity of the programs at the IWMB in protecting our precious resources, our environment and the public's health and safety, continuing to provide valuable public participation and improving its efficiencies and making it even more effective.

When GRP#1 was introduced I welcomed it as an opportunity to review the organization and operation of the IWMB. I believe that all organizations should constantly be looking for ways to improve their operations. That review is what is driving my current efforts to

Ms. Nettie Sabelhaus
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improve accountability and efficiency. Regardless of the final disposition of any reorganization efforts, efficiency, accountability and public access to decision making processes are of paramount concern to me. While reorganization discussions continue, I will strive to accomplish the important mandates and mission of the IWMB to the best of my ability.

Question #3

In 2002, the Legislature and Governor enacted AB 2770 that directed the board to prepare and submit to the Legislature a study on conversion technologies and appropriated \$1.5 million to do the report. The program called for an evaluation of conversion technologies, including a scientific peer review. The report was due in 2003 but did not meet the deadline. Has the board completed the report? If so, what conclusions does it make concerning conversion technologies? Do you support amending the IWMA to allow increased amounts of solid waste diverted through conversion technologies to be counted toward a local agency's diversion requirements? Please explain your reasons.

At the March 15, 2005 meeting, the IWMB approved the final version of the conversion technology report with some minor revisions. IWMB staff is currently in the process of updating the report to reflect these revisions. After the revisions are complete, the IWMB will submit the report through the administrative approval process for official submittal to the Legislature.

The report, which is the compilation of two data reports commissioned by the IWMB concerning conversion technology processes and products as well as life cycle and market impact analyses, produced the following conclusions:

- Conversion technologies are distinct from landfilling and incineration
- Conversion technologies can compliment the current existing diversion infrastructure in many communities
- No single conversion technology is suitable for all feedstocks
- No single conversion technology could be identified as the cleanest, least polluting
- Any conversion technology facility would be required to meet all federal, state and local air emissions standards

Given certain conditions and criteria, I do support amending the IWMA to allow 'credit' for materials diverted from landfill disposal or transformation through conversion technologies. Those conditions include that these facilities are safe and operate in a manner protective of public health and safety and the environment and they meet all environmental requirements. These facilities must be integrated into existing solid waste management infrastructure to ensure that they do not compete with or threaten current or future markets for materials that have a higher and better use. These facilities must process only materials that have had the recyclables removed. With these conditions and criteria met, as well as any others that the Legislature deems

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recyclables removed. With these conditions and criteria met, as well as any others that the Legislature deems appropriate, I believe that materials managed by conversion technologies should count toward diversion requirements, but at a level determined by the Legislature. I personally support amending the IWMA to allow 'credit' for materials diverted from landfill disposal or transformation through conversion technologies at a level commensurate with current statute allowing 10% diversion through transformation.

Question #4

Since 1989, California's diversion rate for solid waste (diverted through reduction, recycling or composting) has steadily increased from 10% in 1989 to 48% in 2002. But in 2003, the diversion rate fell for the first time in 15 years. Why do you believe this occurred? When do you think the requirements will be met by all jurisdictions?

The reason for the drop in the diversion rate is also responsible for the upturn in the economy; the huge housing boom in California. Construction activities dramatically impact the diversion rate. During the course of construction, large quantities of heavy materials are disposed and there was no infrastructure in place to collect or process them. We have been working with local jurisdictions to address this issue. In the last few years, several construction and demolition facilities have been built to collect and recycle the construction and demolition debris. Many local jurisdictions are also implementing construction and demolition ordinances that require construction sites to divert, rather than dispose of their discarded materials. It will take some time for these efforts to catch up with the dramatic increase in generation, but we are on our way.

The second part of this question allows me to address an issue that I have observed in the time I have served on the IWMB: the balance between program implementation and measurable results. Local jurisdictions face similar challenges such as constraints on generating revenue and the requirement to provide health and social services. They also have their own unique challenges, not all of which are completely under their control. With knowledge gained over the years, the IWMB has embarked on an effort to examine the system established by the original IWMA and explore new alternatives that take into account the balance between encouraging full implementation of effective programs for waste reduction and diversion that have an effective, efficient and timely measurement system to track progress, both on a local and statewide basis. It is an exciting process involving all our stakeholders that is yielding some interesting new approaches. We hope to have some concepts to share with you this summer.

Sixty five percent of the jurisdictions have met the statutory requirements and some are far beyond the 50% mandate. In fact, some have set their own local goals higher than the mandated 50%. However, there are some jurisdictions that have not reached the goal, but most are making good faith efforts and continue to make progress. Unfortunately, there are a few that are lagging behind. The IWMA acknowledges that some jurisdictions, especially small rural jurisdictions, are not able to achieve the 50% diversion rate and allows them to apply for a lower rate. My goal is to reach a statewide diversion rate of 50% by 2007. This will be accomplished through our efforts, contained in the targeted action plan that is being assembled at my direction, to focus on high

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hopeful that this will yield the increased diversion we need to reach 50% and lay the groundwork for a continued work toward a zero waste California.

Question #5

The Board has successfully diverted a large number of used tires from existing stockpiles in the last several years. However, many others are still used as a source of fuel and are combusted. What other diversion do you believe are available and could be developed to divert used tires to other recycling uses?

The IWMB has been successful in diverting 26.3 million tires (77.2 percent) of the 34.1 million waste tires generated from landfill disposal or stockpiling. (Currently, approximately 7 million tires are used for purposes of producing energy in either fully permitted co-generation facilities or cement kilns.) This is a huge increase over the 34% diversion rate in 1990, but as with the IWMB's goal of a Zero Waste California, my goal is also 100% diversion of tires from landfill disposal.

The IWMB is in the final stages of preparing the biennial update of the Tire Recycling Plan that contains all the components of the IWMB's Tire Program, including an aggressive marketing plan for maximizing recycling of tires with goals and performance measures. In that plan, there are some segments of the market for waste tires that already exist and can be expanded given the right incentives and market forces. We are working cooperatively with all our partners including other state agencies and local governments to maximize these efforts.

The use of tires in civil engineering applications is an existing market segment that can be expanded. Using waste tires in civil engineering applications includes use as a substitute for lightweight fill in construction applications or ground and mixed in rubberized asphalt concrete. Millions of tires could be diverted if these markets were maximized. The IWMB is working to expand these markets by fostering their uses by state and local governments. I have directed my staff to establish performance measures in this area that will allow us to track our success.

Source reduction is an aspect that is often overlooked when striving to reduce tire disposal. If we take measures to prevent tires from becoming waste prematurely the number of waste tires generated will decrease. If tires are properly cared for, their life expectancy increases dramatically. To address the source reduction aspect to tires, the IWMB is taking steps to promote proper tire maintenance including keeping tires properly inflated and checking for premature wear.

Question #6

Recent reports from the Bureau of State Audits and from CAL-EPA suggest that the enforcement of solid waste laws and standards by the board and by local solid waste enforcement agencies is uneven and at times, ineffective. These reports suggest that the board and local entities rarely impose civil and criminal penalties for serious violations, that private waste facilities generally are regulated more stringently than public facilities, and that these enforcement

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penalties for serious violations, that private waste facilities generally are regulated more stringently than public facilities, and that these enforcement agencies at times have direct conflicts in enforcement because they are part of local governments who derive income from the operation of solid waste facilities. What specific steps do you support to improve enforcement of solid waste laws and standards?

Strict and impartial enforcement of environmental laws is vital to assure protection of public health and safety and the environment. It is also essential to prevent those breaking the law, regardless if they are public or private entities, from achieving unfair benefits against those who are following the law. I am acting to ensure that the IWMB's enforcement programs, not just for solid waste activities, but for all its programs with an enforcement component are fair and effective. To achieve this I believe an effective enforcement program must be multifaceted. Staff in the field need adequate authority, training, tools and oversight of to do their jobs effectively. The regulated entities must be able to understand and implement the laws and regulations that govern them and be certain of the equity of oversight. There also must be a component to identify and capture those entities operating outside the law. To that end, I am directing staff to undertake several efforts.

First, IWMB staff is participating in enforcement coordination efforts with Cal/EPA. We are hopeful that these efforts will allow us to identify the strengths of sister agencies' programs that might be beneficial to our own. For example, we are examining authority similar to that of the Certified Unified Program Agencies which have the ability to impose penalties on operators for minor violations through Department of Toxic Substances Control's statutes.

Next I am ensuring that the progress made in improving solid waste law over the past few years is being utilized by IWMB staff as well as the Local Enforcement Agencies (LEAs). For example, AB 2159 (Reyes), Chapter 448, Statutes of 2004, removed some barriers to timely resolution to enforcement issues. Specifically, this bill states that a request for an appeal hearing does not stay the effect of a cease and desist order issued for operating a solid waste facility without a permit; allows a hearing by an LEA to be conducted by a hearing officer appointed by its governing body; and substantially reduces the length of time it takes to get a dispute to the hearing panel or hearing officer. These are improvements to our enforcement structure that should expedite the resolution of enforcement actions. IWMB staff is working with LEAs to make sure they understand these improvements and encourage them to take advantage of them.

Ensuring that we are addressing the challenge of identifying and providing oversight for solid waste operations that are not currently within our permitting purview is another focus of my attention. For example, we are assisting the LEAs with their requirement to maintain records of, and take appropriate action on, complaints relating to the operation of a solid waste facility, solid waste disposal site, or solid waste handling activity, including, but not limited to, those activities that do not require a solid waste facilities permit.

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The IWMB is mandated to evaluate the LEAs performance against statutory and regulatory standards. It is through these standards and evaluations that we track the LEAs compliance with their responsibilities, including conducting inspections and documenting violations. The 2003 Bureau of State Audits report noted that, while the scope of IWMB evaluations of LEAs was adequate, the IWMB was not completing evaluations in a timely manner. Since then, the IWMB has revised its internal procedures to better document deficiencies in LEA performance so that evaluations can be conducted more effectively and cover all substantive issues. I am pleased to report that as of this month, the IWMB is ahead of schedule for completion of its review cycle. These are the types of improvements that I am working for in all IWMB programs to ensure that the laws are being enforced in a fair and equitable manner.

I hope I have answered these questions to your satisfaction. If you have any additional questions, please feel free to contact me at (916) 341-6051 or Ms. Carol Mortensen, Legislative Director at (916) 341-6288.

Sincerely,



Rosario Marin, Chair
Integrated Waste Management Board

cc:

The Honorable Don Perata, Chair
Senate Rules Committee

The Honorable Jim Battin, Vice Chair
Senate Rules Committee

The Honorable Roy Ashburn
Senate Rules Committee

The Honorable Debra Bowen
Senate Rules Committee

The Honorable Gilbert Cedillo
Senate Rules Committee

California Integrated Waste Management Board

Rosalie Mulé, Board Member

Responses to Questions

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the board?**

California leads the nation in diverting its solid waste resources through the Integrated Waste Management Board's (IWMB) recycling and waste reduction programs and activities. California has gone from a 10% diversion rate in 1990 to 47% in 2004.

In developing my goals, it was important for me to review the IWMB's successes over the past fifteen years and determine the improvements which will bring the state beyond 50% toward a "Zero Waste California."

The mission of the IWMB is simple – maximize diversion of waste resources from landfills to a beneficial use. In support of this mission my goals are as follows:

- Increase focus and accountability through clear priorities that can be tracked with quantifiable performance measures.
- Provide appropriate tools and training for IWMB staff and our partners in local government. This will enhance performance by our Local Enforcement Agencies and arm local jurisdictions with the resources they need to improve diversion success.
- Reform our diversion measurement system so that it accurately portrays both the efforts and accomplishments of jurisdictions, in both program implementation and diversion.
- Explore programs and technologies—in collaboration with our sister agencies within CalEPA as well as other state agencies—that will increase diversion while continuing to protect public health and safety and our environment.
- Continue to provide leadership and expertise in the area of solid waste diversion and resource management, and to ensure that the IWMB will meet new challenges as well as serve the best interest of the people of California.

2. **In 2002, the Legislature and Governor enacted AB 2770 (Chapter 740 Statutes of 2002) that directed the board to prepare and submit to the Legislature a study on conversion technologies and appropriated \$1.5 million to do the report. The program called for an evaluation of conversion technologies, including a scientific peer review. The report was due in 2003 but did not meet the deadline.**

Has the board completed the report? If so, what conclusions does it make concerning conversion technologies?

Do you support amending the Integrated Waste Management Act to allow increased amounts of solid waste diverted through conversion technologies to be counted toward a local agency's diversion requirements? Please explain your reasons.

The IWMB approved the final version of the Conversion Technology Report, with some minor revisions, at its March 15, 2005 meeting. IWMB staff is currently in the process of updating the report to reflect the requested revisions. Upon completion of this process, the report will proceed through the proper channels and be presented to the Legislature.

The major conclusions of the report include:

- Collectively, conversion technologies are distinct from landfilling and incineration.
- Facilities conducting conversion technology processes can compliment the existing diversion infrastructure in many communities.
- At least one existing conversion technology definition requires amendment. Specifically, modifications to the definition for gasification could more accurately represent this process.
- There currently exists no one conversion technology process that is suitable for all feedstocks.
- No single conversion technology could be identified as the cleanest, least polluting.
- Any conversion technology facility would be required to meet all federal, State and local air emissions standards.

Existing IWMB policy recommendations are outlined in resolution 2002-177 which allows jurisdictions to be eligible for up to 10% diversion credit as a result of conversion technologies if specific requirements are met. These specific requirements stipulate that, "... (1) the jurisdiction continues to implement the recycling and diversion programs in the jurisdiction's Source Reduction and Recycling Element or its modified annual report; (2) the facility complements the existing recycling and diversion infrastructure and is converting solid waste that was previously disposed; (3) the facility maintains or enhances environmental

Rosalie Mulé, Board Member

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benefits; and (4) the facility maintains or enhances the economic sustainability of the integrated waste management system."

However, current statute does not allow for diversion credits to be claimed by jurisdictions. The decision as to the appropriate level or even whether or not to allow diversion credits at all would be up to the Legislature, as any change would require legislative action. I do support some level of diversion credit as long as the process fulfills the requirements currently identified in resolution 2002-177 as stated above.

3. **Since 1989, California's diversion rate for solid waste (diverted through reduction, recycling or composting) has steadily increased from 10% in 1989 to 48% in 2002. But in 2003, the diversion rate fell for the first time in 15 years. Why do you believe this occurred?**

In your opinion, what more needs to be done, if anything, to achieve the 2000 statutory requirement to divert 50% of solid waste from landfills? When do you think the requirement will be met by all jurisdictions?

Overall implementation of AB 939 has been extremely successful, with an estimated statewide diversion rate increase from about 10% in 1990 to a current level just under 50%. Along with this significant increase of diversion has been the reduction of more than 300 million tons of disposal that would have otherwise been landfilled. Actual diversion has increased steadily every year since 1990, from 8.5 million tons in 1990 to 35.8 million tons in 2003.

The decline in the diversion rate may be due to several factors. Foremost is the increase in construction activity. Over the past five years, many areas of the state have experienced a surge in construction not seen in decades. Yard for yard, construction debris is much heavier than residential and most other types of commercial waste. In addition, many areas of the State did not have the infrastructure (the facilities and markets) in place to process and utilize these materials. Having worked with jurisdictions in the Inland Empire, I can attest that this negatively impacted the diversion rates in many communities, particularly those with high construction rates.

Another factor is e-commerce. A factor in calculating diversion rates is annual taxable sales date. Because much of the growing e-commerce activity is not reflected in the State's tax data—Internet sales are largely untaxed—diversion rates may be artificially deflated.

A third factor that may contribute to the decline of the diversion rate is the accuracy of the current diversion measurement system. The accuracy of original base years (some are 15 years old), the use of adjustment factors, and

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extrapolation methods can impact a jurisdictions' true diversion. If the IWMB places greater emphasis on implementing quality programs that reflect the communities' waste diversion needs, those jurisdictions will experience higher diversion rates.

4. **The board has successfully diverted a large number of used tires from existing stockpiles in the last several years. However, many others are still used as a source of fuel and are combusted. What other diversions do you believe are available and could be developed to divert used tires to other recycling uses?**

Several diversion options or strategies exist and are available to State and local governments for the diversion of used tires. A comprehensive plan for addressing California's waste tires is laid out in the Five-Year Plan for the Waste Tire Recycling Management Program. This plan has guided the IWMB's efforts in diverting from landfills 77% of the 34 million waste tires generated in California last year. Although this is a significant increase from the 34% diversion in 1990; in the future we can divert even more. The IWMB will soon complete its Biennial Review of the Five-Year Tire Plan in which it places even greater emphasis on market development efforts.

Currently, two of the most promising markets for addressing California's waste tire problems are rubberized asphalt concrete and civil engineering uses.

Rubberized asphalt concrete (RAC) is produced by adding waste tire crumb rubber to asphalt emulsions used in road paving. Estimates are that a minimum of five million waste tires per year could be used in State and local paving projects. Furthermore, RAC projects in California, Arizona, Florida, and other states have demonstrated many benefits over conventional asphalt, including noise reduction, increased pavement life, and enhanced safety. The IWMB has already helped increase the use of RAC by local jurisdictions through implementation of SB 1346 (Kuehl, 2002) which has provided nearly \$2.4 million in grant funding to local governments for the application of RAC. Similarly the IWMB has been working cooperatively with Caltrans to increase the use of RAC throughout all its districts.

Civil engineering, which uses tire shreds or chips, is another promising application for diverting large numbers of tires away from disposal. Tire shreds can be substituted for other types of materials in light weight fill applications, vibration attenuation layers, erosion control, and drainage applications, among others. Several projects have demonstrated the effectiveness and cost savings associated with these civil engineering applications using waste tires. As a result Caltrans is now considering more applications. The IWMB also intends to advance these RAC and civil engineering initiatives through a focused, market development approach targeted at local decision makers.

The IWMB also encourages the development of new products and methods to divert waste tires. Businesses that produce recycled content products are also supported by loans and grants provided by the IWMB. Through these mechanisms the same type of innovation that invented current products which use large number of waste tires, such as RAC, can continue to create new and different applications for this resource.

Another approach is to reduce the growing number of tires disposed each year by expanding the IWMB's outreach and education activities as well as our social marketing efforts. With an increased awareness about proper tire care and maintenance, Californians will not only be able to reduce the amount of tires used but will save money as well.

5. **Recent reports from the Bureau of State Audits and from CAL-EPA suggest that the enforcement of solid waste laws and standards by the board and by local solid waste enforcement agencies is uneven and at times, ineffective.**

These reports suggest that the board and local entities rarely impose civil and criminal penalties for serious violations, that private waste facilities generally are regulated more stringently than public facilities, and that these enforcement agencies at times have direct conflicts in enforcement because they are part of local governments who derive income from the operation of solid waste facilities.

What specific steps do you support to improve enforcement of solid waste laws and standards?

The IWMB has worked diligently to address the issues identified in the 2000 and 2003 Bureau of State Audits Reports. Some of the changes were achieved through IWMB cooperation with the Legislature to change statute. These included AB 1497 (Montanez, 2003), which defined when public hearings are necessary for permit revisions and lifted the cap on administrative civil penalties. Another bill (AB 2159, Reyes, 2004) which removed the "stay" of a cease and desist order when a facility operating without a permit appeals the order and decreased the length of time to hear the dispute.

The IWMB also has taken several steps to increase its oversight and ensure proper enforcement by Local Enforcement Agencies (LEAs). In 2003, revised enforcement regulations became effective requiring LEAs to provide the status of enforcement orders to the IWMB within 30 days of the compliance date. This has allowed the IWMB to more closely monitor LEA performance in this area. In 2002, new regulations became effective which described when, how, and what actions the IWMB can take in its LEA oversight role. As a result of these regulations the IWMB has been able to address situations of potential conflict of

Rosalie Mulé, Board Member
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interest between LEAs and local governments who operate solid waste facilities or who otherwise receive income from the operation of such facilities. Lastly, the IWMB has revised internal procedures to better document deficiencies in LEA performance so that evaluations can be conducted more effectively and cover all substantive issues.

However, more can be done. I support additional changes that would improve the enforcement of solid waste laws and standards. For example, I am working with staff to explore ways to provide a more structured and systematic training program for LEAs and to include solid waste facility operators in such training, pursuant to feedback from industry stakeholders and LEAs. In fact, the IWMB has recently completed a four-year pilot training program for Managers of Landfill Operations (MOLO). Enhanced training of this sort would augment enforcement efforts by acting preventatively and increasing accountability. Models for comprehensive training exist in other parts of the country such as the University of Florida Center for Training, Research and Education for Environmental Occupations (TREEO) program for training and certification of waste professionals.

Currently, IWMB staff also participates in the coordinated CalEPA cross-media Enforcement Initiative. The goal of this comprehensive enforcement effort is to coordinate the enforcement efforts of the Boards, Departments, and Office (BDOs) within CalEPA.

Thank you for the opportunity to share my goals and ideas with you. I look forward to the chance to respond to any additional questions that you or the Rules Committee members may have.

Marko Mlikotin
175 Westbury Circle
Folsom, CA 95630

March 29, 2005

The Honorable Don Perata
C/O of Nettie Sabelhaus
Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator,

As you requested, I am responding to your letter of March 17, 2005 in which you requested a brief and general statement outlining my short and long-term goals as a director of the California Exposition and State Fair.

Short-Term Goals;

- Attendance among school age children and families has dropped in recent years, in part, because more and more Sacramento region school districts have adopted a year-round school schedule. Many school age children are now in school during the traditional two week State Fair dates that concluded on Labor Day. This year, the board of directors voted to extend the State Fair from a 15 day period to 21 days. This extended schedule will allow the State Fair greater opportunities to increase family attendance before the school year begins. It is my goal to increase fair attendance and increase profits.
- To ensure that the State Fair reflects the diversity of California.
- Increase interim events profits.
- Ensure the safety of patrons and provide a clean and family atmosphere at the State Fair and Cal-Expo events.

Long-Term Goals;

- The State of California has not invested any resources in Cal-Expo's infrastructure in more than thirty years. The board should study and develop a long-term plan to enhance and improve the facilities and properties.
- The infrastructure must be improved in the coming years to ensure greater competitiveness with the region's other community and entertainment facilities. It is my goal to work with the board to develop a strategic plan and implement it in the coming years.
- Monitor the economic benefits of Cal-Expo's horse racing program and explore alternative uses for the racing facility if horse racing receipts continue to decline.

Thank you giving me the opportunity to share some of my goals. I hope that this letter is of some value to the confirmation process. Thank you again for your consideration.

Sincerely,



Marko Mlikotin

*Kathleen K Nakase
19279 Archfield Circle
Huntington Beach, CA 92648
Phone 714 969-0141
Mobile 714 317-1957*

March 30, 2005

The Honorable Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Perata:

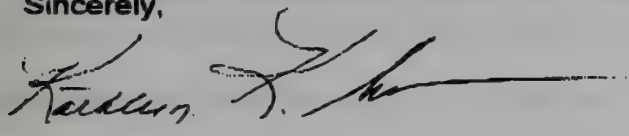
I am extremely pleased to share with you my general philosophy and goals for my tenure on the California Exposition and State Fair Board of Directors.

It is the California Exposition and State Fair's mission to *"Create a California Experience reflecting the interest and diversity of its people, industries, products and trends shaping its future."* In order to fulfill this mission it is necessary that the Board look at the diversity of our population carefully, to insure that all cultures are reflected; that we look at our agricultural industry, both past and present, to insure that we not forget the importance of our grassroots; that we look to the future, to insure that we not lose sight of the growth potential of our State. In addition, it is incumbent upon this venue to provide a multi-faceted experience which will educate the general public, especially our young children.

Also, in providing this "experience" we must be fiscally prudent. Thus, a clear financial plan, both long and short term must be at the top of our priorities.

But most of all, it is our responsibility to provide a safe and FUN place for all the people of California.

Sincerely,



Kathleen K Nakase
Enclosure: Form 700

March 25, 2005

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Perata:

I thank you for the opportunity to share with you my goals during my term as a Director for the California Exposition and State Fair.

I have been involved with the California Exposition and State Fair for the last 19 years in different capacities.

First as a Spanish Radio Account Executive and one of the individuals instrumental in developing Hispanic Culture Day and in charge of maintaining a close relationship between both entities, Radio Station and Cal Expo, through event implementation and music contribution to bring Latinos to the State Fair.

Second, as a member of the Hispanic Advisory Council and last, as a member of the Cultural Advisory Council.

It has always been my mission and vision to showcase the Diversity of our community in all its splendor through music, art and culture. A lot to learn and teach about a very diverse society rich in culture. At the same time wanting to show the community the value of who and what California Exposition and State Fair is.

One of my immediate goals is to help increase revenue. As a business owner, I have always looked at different ways to grow the bottom line. To start, is the collective goal of one million guests to the fair this year. And this will be done through music, entertainment and the showcasing of the diverse cultures that California is made of.

The potential that exists in this property is endless, a way to grow revenue.

Word of mouth marketing is pretty effective when it comes to giving testimonials of why community or business events should be held at Cal Expo. Being part of this local community gives me that advantage, especially since I have had first hand experience in doing multiple events at Cal Expo.

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Image is very important in any business. Norb Bartosik has done an outstanding job managing this property and its people. It is my goal to continue to support his work and the incredible job that staff has done especially during the last couple of unfriendly years.

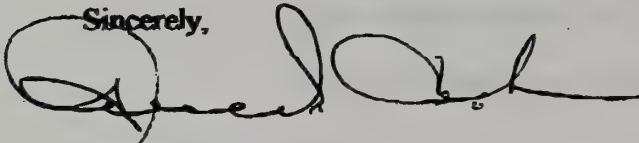
Education is my overall goal. We have the ability to create something very special and give back to the community through grass root projects.

In this fast pace life we all live in, we have forgotten, or have run out of time, to teach our kids the simple things in life such as where corn comes from, the milk, the cheese, the eggs etc. And it is not the supermarket!

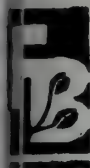
I will support all the programs that are being incorporated by the staff, to create a family environment, education and most of all develop the awareness of the agricultural programs of which California is so rich in.

Thank you again and look forward to hearing from you.

Sincerely,



Amparo Perez-Cook



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

March 29, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814

Re: Short and Longterm Goals for the California Exposition and State Fair Board

Dear Mr. Perata:

This letter is in response to your request for a statement outlining my short and long term goals for the board in the coming years.

First, I would like to further integrate Cal Expo facilities into the Sacramento area to accommodate greater levels of community access and involvement over the next 3-5 years. I also would like to make the California Exposition a premier tourist destination and ensure its place on the top five list of things people will plan to do when coming to Sacramento, including the State Fair and year round programs and activities.

Short term goals include making the 2005 State Fair the most fun, the most popular and the most representative of California now in terms of its diversity of farm products and exhibits, cultures, climates, ecology and viewpoints. I also would like to permanently incorporate a strong sense of California's multicultural history in all State Fair activities, shows and featured events

Sincerely,

Brenda Jahns Southwick
California Farm Bureau
Managing Counsel

Cc: Bill Pauli
George Gomes
Norb Bartosik

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